Northwest Territories.
[Commissions and committees of inquiry]
Inquiry re administration of justice in the Hay River area of the Northwest Territories. Report. 1968.
Commissioner: Justice W.G. Morrow.

I N Q U I R Y

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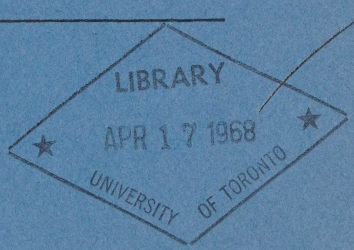
ADMINISTRATION OF JUSTICE
IN THE HAY RIVER AREA OF THE NORTHWEST TERRITORIES

R E P O R T



The Honourable Mr. Justice W. G. Morrow
The Commissioner

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I N Q U I R Y

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ADMINISTRATION OF JUSTICE
IN THE HAY RIVER AREA OF THE NORTHWEST TERRITORIES

R E P O R T

The Honourable Mr. Justice W. G. Morrow
The Commissioner

1 9 6 8

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL,

May It Please Your Excellency,

I, the undersigned, William George Morrow, of Edmonton, Alberta, and Yellowknife, Northwest Territories, Judge of the Territorial Court of the Northwest Territories, appointed Commissioner by Order in Council P.C. 1967-1327, under Part I of The Inquiries Act, to investigate and report upon the administration of justice in the Hay River area of the Northwest Territories and report upon statements in editorials appearing in issues of "Tapwe" newspaper, dated March 27, April 3, and April 10, 1967, containing suggestions that court proceedings are not open, that steps have been taken to hamper the press, and that all individuals do not receive fair treatment in the Courts in that area;

Beg To Submit To Your Excellency

The Following Report

W. G. Morrow

The Commissioner

February 5th, 1968.

P.C. 1967-1327

CANADA

PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 4th July, 1967.

The Committee of the Privy Council, on the recommendation of the Minister of Justice, advise that the Honourable Mr. Justice W.G. Morrow, a Judge of the Territorial Court of the Northwest Territories, be appointed a Commissioner, under Part I of the Inquiries Act, to investigate and report upon the administration of justice in the Hay River Area of the Northwest Territories and, without restricting the generality of the foregoing, to investigate and report upon statements in editorials appearing in issues of the newspaper "Tapwe" dated March 27, April 3 and April 10, 1967, suggesting that

(a) court proceedings in Hay River in the Northwest Territories are not open to members of the public,

(b) steps have been taken to hamper members of the press in efforts to inform the public about proceedings in the courts in Hay River in the Northwest Territories, and

(c) all individuals do not receive equal treatment in the courts in Hay River in the Northwest Territories.

The Committee further advise:

1. that the Commissioner be authorized to adopt such procedures and methods as he may from time to time deem expedient for the proper conduct of the inquiry, and to sit at such times and at such places in the Northwest Territories as he may decide from time to time;

2. that the Commissioner be authorized to engage the services of such counsel and court reporters as he may require to aid and assist in the inquiry at rates of remuneration and reimbursement approved by the Treasury Board; and

3. that the Commissioner report his findings to the Governor in Council with all reasonable dispatch.

CERTIFIED TO BE A TRUE COPY

CLERK OF THE PRIVY COUNCIL

I N T R O D U C T I O N

During the months of March, April and May, 1967, a series of editorials was published in a newspaper called "Tapwe". The name is apparently a Cree word meaning "That's for sure" or "That's definite". The editor and publisher of the newspaper is and was Donald Taylor, a resident for some years of Hay River. The paper runs to about 16 pages each issue and appears normally to be published at Hay River every Monday. It is attractively made up in content and form and circulates generally in Hay River and to a lesser degree elsewhere in the Northwest Territories. These editorials, particularly those of March 27, April 3 and April 17, 1967, combined with requests in the form of letters from two Hay River Justices of the Peace, Rudolf Steiner and D. M. Stewart, appear to have resulted in bringing on the present Commission.

Hay River, itself, is made up of several concentrations of population, the new town, the old town, the west channel, the new Indian village and the old Indian village. It is interesting to note that the population is approximately 2575, being 355 Indians, 1190 Metis (or non-treaty Indians) and the balance whites or non-native. The five segments are separated by several miles of gravel road, bridges and water, the new town being on one bank of

the Hay River, the Indian villages on the other bank (with no bridge connection) and the old town on an island in between these two, and located at the mouth of the river where it enters Great Slave Lake. West Channel is a separate settlement on the island where generally those connected with fishing live.

Originally a native area and trading post, Hay River in recent years has experienced a rather rapid and turbulent development which has undoubtedly contributed to the circumstances giving rise to this Commission. Suffice to say that in the last few years there has been a devastating flood, the development of, and later some depression in, a fishing industry, the location of a major mining development some 68 miles distant at Pine Point, and a steady build-up of all types of agencies necessary to handle transportation to and from Hay River -- motor vehicle and truck, river and lake barges, air, and railway. Hay River might be called the ground transportation "hub" of this part of the North.

It is felt that the above-mentioned background is necessary in order to appreciate the review of the evidence and the remarks which follow:

A full discussion of the editorials mentioned above will take place later but it should be pointed out that three basic charges or allegations arise from their content:

(a) Court proceedings in Hay River are not open to members of the public;

(b) Steps have been taken to hamper members of the press in efforts to inform the public about proceedings in the courts in Hay River; and,

(c) All individuals do not receive equal treatment in the courts in Hay River.

A detailed study of the evidence taken will disclose that the "courts" referred to were those commonly known as the Justice of the Peace Courts. Indeed the Commissioner only agreed to act after first ascertaining that the remarks contained in the editorials were not directed at either the Magistrate's Court or the Territorial Court level.

The present Commission was authorized under Part I of The Inquiries Act by Order in Council P.C. 1967-1327.

David C. McDonald, Esquire, of Edmonton, was appointed counsel for the Commission. Reference is made in one of the appendices to this report to other counsel.

Notices were inserted in the Edmonton Journal (circulates in Hay River area), in Tapwe and in Hay River News (both of Hay River); in News of the North (of Yellowknife); and in Norther (of Ft. Smith), advising of the inquiry, its date of starting, and inviting interested citizens to come forward and make such representations as to them seemed proper.

V. N. Morris, Esquire, Deputy Clerk of the Territorial Court, was appointed as Secretary to the Commission, and Miss Winnifred Clark acted as Court Reporter to take the evidence. Mr. Everett Tingley assisted in recording the evidence at one sitting.

Except for one sitting at Baker Lake, Northwest Territories, and two at Edmonton, Alberta, all sittings of the Commission took place at Hay River. The sittings commenced at 9.30 o'clock in the forenoon of August 15, 1967 and concluded on January 12, 1968. In that interval the Commissioner heard 54 witnesses, during 14 days, and in all 1284 pages of evidence were taken and 71 exhibits filed.

Commission Counsel called each witness who gave evidence and examined him in chief on the statements

which the witness desired to make. Other interested parties not represented by counsel wishing to have questions asked were invited to pass questions orally or by note to Commission Counsel and he put these questions forward. This procedure was seen to be used in many instances. Donald Taylor, editor of "Tapwe", for part of the proceedings was represented by counsel and his counsel was allowed to cross-examine. As to several witnesses who desired to supplement their testimony with written recommendations, the Commissioner gave them leave to file supplementary or written submissions. If any party concerned with the proceedings indicated a wish to have a witness called, such witness was called at the expense of the Commission.

On two separate days, the Commission moved to the new Indian village to hear testimony from the Indians. On the first occasion the hearing was in the absence of any press or other persons and on the second occasion it was with the press present and any other person who showed the interest to attend. The small number of Indians who attended and gave evidence on the second occasion testifies to the fact that these people felt less inhibited in the presence of the Commissioner alone.

Copies of the evidence were made available to all interested parties, as it became available.

Because the Order in Council is generally in two parts, one referring to administration of justice at Hay River and the other referring to the specific allegations or charges, for convenience the second aspect will be treated first and then the general aspect last.

P A R T I

ADMINISTRATION OF JUSTICE - HAY RIVER CHARGES

A.

COURT PROCEEDINGS ARE NOT OPEN TO MEMBERS OF THE PUBLIC

The March 27, 1967 issue of Tapwe carries an editorial extolling the principle that open courts are necessary for the administration of justice. It then mentions the difficulties a person in Hay River experiences if he or she wishes to attend a court hearing.

Phrases such as: "First you must force your way through the closed door of the private office in which the court is being convened"; " . . . presuming it's not locked"; " . . . must get past the uniformed guardian of the law who is blocking your entry" and so on. Reference to the trouble the public have in even finding out "when and where the court is to be held" is also found.

Back in May 23, 1966 the same newspaper recounts how R.C.M.P. officers in Hay River decide "who shall and who shall not be admitted to the 'open courts' which are held behind closed doors in someone's private office."

Evidence at great length was adduced under this heading, both as to the topic in general and also as to two specific instances, namely those that shall be called the Hupp and the Scott cases.

Lillian Hupp:

While charges were pending against one R. Esmonde and involving young female juveniles, Mrs. Lillian Hupp telephoned the R.C.M.P. detachment office to find out if it would be in open court. Her recollection is to the effect that Corporal Johnson advised her it would be open court but that the police did not want a large crowd. The Corporal does not recall the conversation. Donald Taylor recalls several persons telephoning him for information as to when the case was coming up -- they apparently having trouble ascertaining the date and time.

Rosemary Scott:

Criminal proceedings had been launched by Mrs. Scott against her husband. They were eventually withdrawn at her request but on one occasion a session took place before the Justice of the Peace -- Rudy Steiner -- in the inner office at the R.C.M.P. detachment. Donald Taylor accompanied Mrs. Scott, apparently to assist her. As she

was ushered in to see the Justice of the Peace the door was being closed on Mr. Taylor by the police. When he explained why he was there he was allowed in.

General:

Hay River until about September, 1966 was without any place that could properly be considered as a Court House or Court Room. Of necessity, therefore, the Justices of the Peace held their court in the back office of the R.C.M.P. detachment.

The testimony heard on this subject makes it clear that, while police premises are always made available for holding court, the police themselves prefer to have courts held elsewhere. No doubt it is a convenience to the police and the Justice of the Peace to hold court in the police office where records, forms and the stenographer's services of the police are ready at hand. Such a cosy relationship however does lend itself to the suspicion that the public is not welcome and the court is closed to the public.

Although, apparently, no advice was ever received as to the availability of the new Court Room in the new

Federal Building it was found to be ready sometime about September, 1966 and has since been used by the courts. It is worthy of note that the court room has only become furnished as of October, 1967.

I am satisfied from all the evidence heard that no Justice of the Peace has held court behind closed doors, that the police at no time have attempted to exclude the public from attending court, although they may not have made it easy for members of the public to find out when court was to sit.

I am satisfied that, although there has been no real pattern for the dates and times the Justice of the Peace court has been held, there was no sinister reason for this, the dates and times being dictated only by the necessity of a busy man having to fit the time in and also by the Justice's wish to accommodate the accused.

I am satisfied that the police were not trying to hide anything and that they cannot be expected to alert the news media as to court times and dates except to make this information available when sought.

It is up to an alert newspaper man to inquire as to dates and times. I would suggest that the editor of Tapwe make the effort to attend court sittings more often.

The evidence suggests that since the appearance of the editorials referred to under this heading an attempt seems to have been made to hold court at more regular hours which is to be commended.

RECOMMENDATIONS

1. As much as possible the Justice of the Peace court should be held at regular times and on regular days.

2. The hearings should always be in the building and room designated and recognized as the Court House or Court Room and away from the police detachment.

3. While the new Court Room premises in the new Federal Building are adequate for the Justice of the Peace court it would be desirable to have this court held in premises in the "old town" so long as the population of that town remains there, as it is important to take the court to the people.

4. Appropriate signs should be affixed to the outside of the building and the Court Room to designate where court is being held.

5. A sign should be installed in the Court Room warning the public that smoking is prohibited.

B.

MEMBERS OF THE PRESS ARE HAMPERED FROM INFORMING THE PUBLIC ABOUT COURT PROCEEDINGS

An editorial of May 23, 1966 charges that R.C.M.P. officers "decide which public court documents shall be public and which shall go into the 'Top Secret' file."

The issue of February 20, 1967 contains an announcement that local court news would not be available as R.C.M.P. officers have received orders from Justices of the Peace Donald M. Stewart and Rudy Steiner not to make court records available to representatives of Tapwe.

On April 3, 1967 there is an article about lack of special arrangements in the Court House to seat the press and failure to provide court dockets in advance, and alleging that the police are under orders to deny information about court activities.

While the Inquiry devoted a great deal of time to this heading and heard several police officers and Justices of the Peace as well as the editor of Tapwe the subject is a relatively simple one.

For convenient treatment the discussion will be under three main topics:

1. Public Documents and Records

In Hay River there could be three main sources of information. One, a Magistrate's Docket Book or Record, kept by the Justices of the Peace; a card index kept by the police; and the police file. In addition there is the actual Summons or Information which eventually becomes the court file kept at Yellowknife.

The Magistrate's Docket or Register is a large stiff-covered ledger type of loose-leaf book which lists each case heard by a Justice of the Peace and sets out beside the name the fine or sentence or other disposition. The particular one used at Hay River, and marked as an exhibit, came into being by Justice of the Peace Steiner purchasing the covers, after which the Department of Justice was persuaded to supply the sheets.

The police keep a file on each case until final disposition and from this, as well as from the Magistrate's Register referred to above, make up and maintain a card index set up for each person who is charged with any offence. This card index system over the years, as might be expected, becomes a valuable source of information for the police -- not just a record of convictions but in helping the police make investigations and arrests.

While I can see no real reason why the Magistrate's Register cannot be made public to the news media, it does not seem to me to be what one can properly call a public document or record.

The police file and the card index are certainly not public documents and should not be released to the news media.

In respect to documents it is my opinion that only the actual Summons or Information containing the charge can properly be considered a public document.

2. Information Supplied to Press or News Media

Up until about February 1967 it appears that Mr. Taylor or members of his staff had access to the Magistrate's Register discussed above. At that time on orders of both Justices of the Peace Steiner and Stewart further access was denied.

Both Steiner and Stewart admitted giving these orders to the police and gave as their respective reasons the fact that publication of the court news seemed to unduly hurt the persons convicted by affecting their car insurance. Justice of the Peace Steiner went further and stated he thought that notoriety was additional punishment

and not to be encouraged. Both agreed that they did not give the orders following any agreement between themselves. They pointed out that the same order applied to the other Hay River paper, the Hay River News -- in which Steiner had a financial interest.

Whether this was the reason or whether the needling by Tapwe in previous issues, and a recent action brought by Donald Taylor and others to unseat the then Mayor Donald Stewart and an attempt at retaliation was the reason, does not matter. The orders were given, the police felt they had to follow the orders of the local court, and the remarks in Tapwe on February 20th resulted.

Whatever the reason it was an act calculated to harass the Tapwe editor and completely succeeded in its objective. Even if the Magistrate's Register can properly be considered as not being a public document it is my opinion that this act of Justices of the Peace Stewart and Steiner cannot be termed other than childish and unbecoming persons charged with the important duties of administering justice. Similarly the members of the R.C.M.P. Hay River detachment appear to have been too eager to carry out the orders of the Justices of the Peace and for a time at least court news was not easily obtainable.

Additional complaints arose in that the editor of Tapwe suggested that on occasions information was held back. The police witnesses denied any holding back of information but did agree that sometimes, as in the Esmonde case, certain material or names of witnesses or juvenile offenders or complainants were sometimes held back deliberately either because investigations were still underway or because juveniles had to be protected.

Mr. Taylor took the position on the contrary that what he called journalist's ethics prevented him from publishing such things as the names of juveniles, but that he, not the police, was to be the judge.

Again it was suggested by Mr. Taylor that names or information were on occasion withheld in an effort to protect someone. Justice of the Peace Stewart agreed that he remembered once asking him to keep a name out but the request was refused, and he states he never made the request again. The police witnesses deny ever having held back any names for this purpose. It is my assessment of the evidence that if in fact any names were not given to Mr. Taylor the failure was one of inadvertence only, or for the purpose of protecting an investigation still underway, or to protect juveniles, all of which was justifiable.

It is clear from the evidence of Mr. Taylor and of the police witnesses that on occasion information concerning trial dates and prosecutions was not made readily available. This was undoubtedly the result of the insistence of the officer in command that information be released only through him. It is equally clear that Mr. Taylor did not always exert himself in seeking the news nor was his approach in every instance a diplomatic one.

While I support the policy adopted by the officer in command that he keep control of the giving out of news, I do think that the police at Hay River during the period that concerns this Commission, perhaps irritated by editorials in Tapwe, have been slow in giving out news when it should have been more readily available, as for example,when the officer in command was not available to authorize releases of same. A greater effort at co-operation was to be desired. This situation appears to have been cleared up under the new commanding officer Sergeant Friesen.

3. Lack of Arrangements for News Media

It is quite clear from the evidence that no special table or facilities were set aside for the press

during the hearing of cases before the Justices of the Peace either in the new room set aside for court in Hay River or in the detachment quarters during the time court was held there. It is equally clear that the present facilities in the room set aside for court do not lend themselves readily for the provision of a special press table.

R E C O M M E N D A T I O N S

6. That the Department of Justice assume ownership and responsibility for the Magistrate's Register or Docket books and lay down rules as to who is to have access to same.

7. That the Officer in command of the Hay River detachment remain the man responsible for the release of information to news media but that he delegate some subordinate to exercise the same function if he is to be absent for any length of time -- it is to be remembered here that delay in access to information may make news stale, thus making it really no news.

8. That the Officer in command at Hay River ensure that as much as possible the dates and times for hearing of cases of any level of court be readily available to the news media and to the public.

9. That until proper court facilities become available in Hay River a table be provided for members of the press or other news media so long as the other needs of the court do not make the space occupied by same necessary for the proper function of the court itself.

C.

ALL INDIVIDUALS DO NOT RECEIVE EQUAL TREATMENT IN THE COURTS IN HAY RIVER

Of all the charges contained in the series of Tapwe editorials with which the Commission was concerned, this one was the most serious and received a great deal of attention.

The April 10, 1967 issue of Tapwe contains, among others, the following statements:

> "There are, admittedly, some individuals who do not want publicity because they do not want fair treatment. They expect to receive preferential treatment because of their 'pull' with public officials."

> "There is no secret of the fact that Indian and Metis teenagers in Hay River are being shipped away to jail for drinking while underage while the children of white parents are discreetly warned or subjected to modest fines for similar offences."

> "Either pressure of that sort (at which the editorial went on to mention how the Editor is faced by parents, police and officials) or the officials involved may take it upon themselves to keep the conviction from the press, but not always successfully."

With this series of charges in mind the Commissioner attempted to call every person who could conceivably have any knowledge, however remote, bearing on the matter.

The three Justices of the Peace in Hay River, a great many police, both the present officer in command and members who had had the position previously, a former member of the Territorial Council, the Tapwe Editor, a great many people who had been charged by the police and brought before one or other of the Justices of the Peace, were heard. In addition, two trips were made to the Indian village to get, if possible, the views of the native people as well. Government officials were called, welfare workers and so on. Many briefs by interested associations or groups were also received here.

This subject can be best treated under several headings but of course a certain amount of overlapping will be inevitable.

1. Indians and Metis go to jail while Whites do not

A more general discussion of the Indian, Metis and Eskimo peoples will be found in Part II of this Report. To avoid repetition, therefore, the discussion under this heading is restricted to the specific charge.

For the most part Mr. Taylor bases his allegations in respect to Indians and Metis on his own interpretation of two main sources of information, namely the

court news reports found regularly in his paper Tapwe, and in the conviction statistics. To this he adds his own knowledge gleaned from conversation and observation over the years in the Hay River area.

He asked the Commission to examine the newspaper reports, issue by issue, and from that to reach the conclusion that those who were Indian or Metis more often than the whites went to jail for minor offences such as intoxication charges.

In this connection Mr. Taylor while giving his testimony spent a great deal of time and attention in discussing some of the persons mentioned in these reports. He showed a very complete knowledge of the subject and obviously has put a great deal of thought into the matter. In the same connection Mr. Steiner was examined on the same ground, as also were several of the police witnesses. At the Indian village some of the persons who were the actual ones mentioned by Tapwe appeared as witnesses and to some extent gave their version of the story.

Nearly every one of the Indians who gave evidence at the Indian village quite frankly and without any apology discussed his own particular experience or experiences when arrested or when brought before the court.

While most of the white witnesses that appeared before this Commission testified to a great extent on matters of opinion or observation, the native witnesses described first-hand.

It would take a very intensive study, far beyond the competence and needs of this Commission, to come up with a truly comparative set of figures on the convictions with which the Commission was concerned. Such questions as previous sentences, whether the accused had money to pay the fine, and a multitude of other factors, all of which would or might have affected the convicting Justice of the Peace, would have to be answered and studied first.

The Commissioner is satisfied however that the evidence as it came out in its various forms is sufficient, and clear enough, upon which the observations and recommendations that follow here and elsewhere in this report can safely and reliably be made.

It is my opinion that there has not been any discrimination in the true sense against the Indians or Metis population, but that in the basic and general administration of each of the respective areas, both the Justices of the Peace and the Royal Canadian Mounted

Police have treated Indians, Metis, and whites or others without favor or bias.

To put it another way, there is nothing to suggest that in the past few years in and around Hay River, when a policeman has gone on patrol and has made an arrest, he has in any way adopted an attitude against an Indian or Metis, or has, shall we say, gone out to get them. His approach in each case so far as this Commission can see has been on a purely subjective basis -- is the man (regardless of color) drunk, committing some offence, likely to get hurt, or some such thing?

Similarly when the party has come before the Justices of the Peace, regardless of who that Justice of the Peace may have been, he has been tried, convicted or sentenced, with regard only to the nature of the offence, the man's record, and so on, and his color or his antecedents have not consciously affected the approach of the convicting Justice of the Peace.

Remembering that there will be a fuller discussion in Part II, I must add here however that, although there is no discrimination and has not been any discrimination, nonetheless the Editor of Tapwe was not to be blamed for suggesting that Indians and Metis may go to jail where whites do not.

For the present moment I will only observe that the Editor's suggestion recited in the paragraph above may be quite valid and could be the result of all or perhaps many things that are to be found in the Hay River area, and alas, in all other parts of the North-west Territories, in greater or lesser degree.

To merely mention a few of these things:

(1) The poverty or desperation of the Indians or Metis results in such an accused almost always taking or having to serve a jail term rather than pay the fine his white brother may be able to put up.

(2) The Indian or Metis, not having a job to go to, may not be in as good a position to argue for a fine rather than a sentence -- to save his job.

(3) The unmarried female Indian or Metis may be suspected of raising the fine by prostitution so less likely to be fined -- in the belief that a jail term is safer for her.

(4) Because the Indian or Metis is less able to look after himself when drunk he runs a greater risk of being arrested.

(5) After arrest the Indian or Metis because of lack of understanding of what court process means, language difficulties, and lack of communication with his people, is more likely to plead guilty and is perhaps less likely to be able to put up a plausible explanation, or in fact to even attempt an explanation, in mitigation of sentence.

(6) The Indian or Metis may have adopted the philosophy that it is his fate to go to jail.

Constable R. J. Anderson gave the population figures and certain statistics relating to convictions in Hay River and area. Through him several tables were filed as exhibits including Exhibit 19 showing a population breakdown for 1966.

From the above it would appear that 881 cases went before four Justices of the Peace for adjudication and that of this number 609 were cases involving charges

under the Liquor Ordinance. What is even more interesting is that 117 of the 609 involved persons of Indian status. During the same period the total population of persons of Indian status (Treaty Indians) at Hay River was 355. If an additional 84 non-liquor cases are added the figures show that out of a total population of 355 Indians there were 201 charges preferred. The exhibits show, however, that 101 individual Indians were involved. Even on the basis of 101 individual Indians out of a total of 355 (including women and children) one gets the awesome picture of almost one-third of the Indian population passing through the Justice of the Peace court in one year. This must be almost the entire adult population. It is also clear from the exhibits that the number of Indian cases is out of proportion to those involving whites.

Such statistics might lead one to believe either that the Indian population of the Hay River area are disposed to behave in a criminal manner or that there must be some other explanation. I refuse to believe that the Indians at Hay River are in any sense of the word criminals or show a greater tendency to lean to a life of crime than other peoples. I do believe from what came before me in the evidence heard on this Commission, and from my own

experience and observations, both as former defence counsel acting for natives in the north and now as judge hearing their cases, that there is another explanation for the above sad situation. This will receive more detailed treatment in Part II.

2. Some individuals exert pull to avoid publicity with respect to their or their children's appearances in the Justice of the Peace Court

The suggestion here was that persons who might ordinarily have been charged have been able to exercise pull or influence to avoid being charged, or if charged, have the charge remanded, and of course thereby succeed in keeping the news quiet and out of the Tapwe paper.

This subject properly came up for treatment under two general headings: (1) teenage whites, and (2) members of the community who were important enough to exert influence or pull.

(1) Teenage Whites - The general tone of the evidence before me under this heading did not satisfy me at all that there was any pattern or plan to protect or shelter teenage whites, particularly white girls. Rather the picture that I got from the evidence showed a disposition in the minds of both police and Justices of the Peace

to hold back as much as possible from charging young people or from committing them to jail terms when conviction was necessary -- and this without regard to race, creed or color.

I am satisfied that when Inspector H. T. Nixon stated: "We discourage the preferring of charges with juveniles of tender years" he was correctly reflecting the attitude at Hay River.

My general remarks already set out above in subsection 1 lead me to believe, however, that native juveniles for some of the reasons set forth are more likely to be repeaters and therefore this aspect alone could quite easily lead some observer to get the impression (innocent as it may be) that the whites must be getting favors.

In passing, I should reflect that Mr. Taylor, who had indicated that he had personal knowledge of the names of white girls who had been protected from prosecution here, when asked to give those names in camera so that this Commission could examine in detail, refused to give the names. As Commissioner I felt considerable disappointment that the Commission was thereby frustrated in one phase of its inquiry. It was with regret, too,

that I felt constrained to fine Mr. Taylor for contempt, for this newspaper man was most helpful and co-operative in all other respects during the hearings and his attitude to this particular question, prompted by his own code, did create the only real instance of lack of co-operation in the entire proceedings.

(2) Pull or Pressure by Important Members of the Community - To get to the bottom of this suggestion, as many specific cases as possible were examined.

Joe Vachon Estate - It was claimed that two or three gentlemen, including Rudy Steiner, Justice of the Peace, purchased a quantity of liquor and held a party at the graveside of the above deceased, that police investigation followed, but that no charges were laid, thereby leaving one with the suspicion that pull or pressure, possibly the influence of the Justice of the Peace himself, prevented the normal course of the law. Testimony was heard from Mr. Taylor and Mr. Steiner on this.

I am satisfied that there was some form of ceremony involving liquor at the graveside but attribute it to an effort to carry out the request of the deceased, and I think the police showed good taste in laying no charges.

Carmody Case - This man apparently came up before Rudy Steiner, as Justice of the Peace, on various liquor charges, during a period when he was an employee of Mr. Steiner. Mr. Steiner instead of disqualifying himself from the cases, heard them anyway. The possible inference was that the employee got lighter fines than he might otherwise have obtained. There is nothing in the material before me to indicate that this man's fines were other than correct. However, it was most unwise for the Justice of the Peace to put himself in this position when other Justices of the Peace were readily available to hear these cases.

Dr. E. L. Covert - During the course of taking testimony, it came out that on one occasion one of the local medical doctors, Dr. E. L. Covert, was stopped by Constable St. Jean for speeding. He was apparently clearly exceeding the speed limit while driving an ambulance owned by Rudy Steiner, the Justice of the Peace. It appears that for a time this ambulance was made available to Hay River free of charge. On the occasion in question the doctor explained that he was going to what he understood was an emergency call but it turned out to be otherwise. Constable St. Jean in reporting the incident to his superior officer, then

Corporal Penteluik, was told not to proceed with the matter. The Corporal decided not to lay the charge because in his mind so long as a doctor did not abuse what might be termed an unofficial privilege, the police would refrain from court proceedings. The siren with which the ambulance was equipped was not operating at the time. I see nothing wrong with the approach taken by the police in this instance and I can find nothing to suggest that there was any pressure exerted on the police by Justice of the Peace Steiner or anyone else.

In summary it is to be noted that in a small community such as Hay River it is to be expected that close relationships, such as between Rudy Steiner and Dr. Covert in respect to the ambulance, will be quite common. It is easy, too, to suspect them as was the case here. Some of these people may have acted foolishly in these instances, providing grounds for gossip or suspicion, but that is the most serious view I can take of them.

RECOMMENDATIONS

10. That the general policy to let youthful offenders off with warnings on first offences is to be commended and within the limits of discretion should be continued.

11. To avoid undue suspicion as to motives, when any juvenile is let off with a warning as in Recommendation 10 above, I suggest that, in any case where the matter is relatively serious, the decision require the approval of either the Crown Attorney or an R.C.M.P. Official of Subdivision level.

12. That except in communities where there is only one Justice of the Peace or where an alternative Justice of the Peace is not readily available, a Justice of the Peace should refuse to hear any case involving employees, relatives or other persons with whom he may be on close terms.

13. That consideration be given at the municipal level to incorporate by amendment to the traffic by-laws exemptions to exclude such drivers as doctors on emergency so that the enforcement officers are provided with guidelines in carrying out their duties.

3. Justices of the Peace and Police have on occasion exerted pressure on accused persons to the detriment of their cases

One aspect of this allegation, namely, the suggested pressure on native persons brought up on charges, will be treated in detail in Part II so will not be discussed here.

The general suggestion under this heading was that pressure has on occasion been brought by the police on an accused person to get guilty pleas or to prevent appeals. Similarly it was suggested that Justices of the Peace on occasion might use their office to get even with persons for personal affronts or to satisfy their own egos.

Several specific instances illustrate the basis or lack of basis for the above:

Cecil Rodgers Case - Mr. Rodgers, a retired gentleman, was employed as a Sunday guard, on a more or less regular basis at the R.C.M.P. detachment in Hay River until the emergence of the Tapwe editorials with which this Commission is concerned. Rodgers was Mr. Donald Taylor's landlord. He was told that the police no longer required him. Sergeant D. F. Friesen, Officer in Charge of the R.C.M.P.

at Hay River, explained that he knew Mr. Rodgers to be a friend of Mr. Taylor of Tapwe and "in view of the critical remarks made in the 'Tapwe' I considered possibly that Mr. Rodgers, who was of some age, he is an old northerner, might be embarrassed at some time through the editorials, and therefore he wasn't contacted again for employment". Mr. Rodgers was not asked by the Sergeant if he was embarrassed. However Mr. Rodgers in giving his testimony did not appear to take any issue on the matter, indicating that he was probably glad to be allowed back to enjoy his retirement.

I do not think this was an attempt by the police to exert pressure on the editor of Tapwe. I do think however that it was a weak attempt to retaliate in a small way for the editorials which must have hurt and embarrassed the police. It may be that Sergeant Friesen had cause to be put out at the editor but it was not for him to retaliate. This police officer, during the Inquiry, and on other appearances before me, has always impressed me as an excellent police officer and I can only say I am sorry that he suffered what I am certain was a temporary and foolish lapse on this occasion.

Al Ambedian Case - The details here are quite complicated but in brief it appears that while Mr. Ambedian was being tried before Justice of the Peace Steiner for illegal possession of a firearm or some such charge, and his trial or trials were spread over more than one date, he suffered in his opinion two efforts at pressure or two indignities. His house was searched in the early hours of one morning by the police, who arrived with a search warrant and seized a document (statement by a witness) which he had intended to use in his defence. When later he was arguing against the Crown's attempt to introduce rebuttal evidence he was restricted in his defence by an admonishment by the Justice of the Peace to in effect "shut up" or be subject to contempt. The police evidence indicates that the search warrant was required as they believed that Mr. Ambedian was attempting to interfere with a Crown witness. Justice of the Peace Steiner quite readily agreed that he had probably given the admonishment but took the position he felt it was justified.

It is not for me to re-try cases such as this one, but I am satisfied that the police did not take the steps they did here except in good faith. I believe that Mr. Steiner also felt he was acting quite properly as the

presiding Justice. I do think, however, that great care should be taken by the police in situations such as we find here as their action does suggest a pretty high-handed effort which is anathema to what we expect from this fine force. Similarly the actions of the Justice of the Peace tend to suggest an impatience, perhaps the result of an overworked Justice, that should be avoided.

George Lafferty Case - Again we have a very complicated set of facts here. In essence the complaint is that Lafferty had employed a lawyer in Yellowknife to prosecute an appeal from a conviction by Justice of the Peace Steiner which had taken away his driving privileges, and that after his notice of appeal had been filed, an R.C.M.P. police constable, namely, R. J. Anderson, while serving him at his place of employment with a notice of intention to use an analysis showing the percent of alcohol in his blood, threatened him with a more serious criminal charge if he proceeded with his appeal. As a result he instructed his lawyer to desist. Because of the seriousness of the allegation a large number of witnesses were called before this Commission and some were recalled. It is clear from the evidence that if the occasion on which the threat is supposed to have been made was the date on which Lafferty was served

with the notice of intention, then the appeal had already been withdrawn. I am unable to conclude from what came before me that there ever was such a threat. What I think probably happened is that Lafferty misunderstood the effect of the service of the notice of intention, believing that it meant a more serious charge, whereas it was merely a step by the Crown in preparation for the retrial of the old charge.

John Clifford Booth Case - While there was very little of importance in the facts adduced in respect to this case it appears that Booth, who had had business dealings with Justice of the Peace Steiner, not always pleasant, on the occasion of coming up in court on a beer-brewing charge requested to be tried by some other Justice. He was told he "couldn't get another Justice". I think this was unfortunate as there have been two to three Justices of the Peace available at all pertinent times in Hay River. The refusal here reflects an attitude that seemed to be all too prevalent in Hay River during the period under consideration -- an attitude of indifference to the niceties of a given situation, a disregard of one of the fundamentals of the administration of justice, namely, that justice must not only be done but must appear to have been done. In remote communities it is not always

practicable to apply this doctrine too strictly but I can find no reason why more care was not taken to avoid the appearance of unfairness here. The accused Booth showed a very truculent attitude in giving his evidence before this Commission, which attitude may have affected the Hay River authorities, but feelings and personalities must not be permitted to interfere.

RECOMMENDATIONS

14. Police officials and Justices of the Peace should be cautioned from time to time by those departments responsible for their instruction and discipline, that minor irritations, particularly unfavorable press, can be expected from time to time but that they must attempt to be impervious to them and remain aloof from same.

15. That where police action is contemplated while a case is before the court, in situations as was experienced in the Ambedian case, the police should withhold making searches and seizures and taking other acts that can be described as high-handed unless satisfied that a serious miscarriage of justice or a serious crime may be about to take place, and even then the persons concerned should

not act without first consulting with the Crown Attorney and taking instruction from him.

16. Justices of the Peace should be repeatedly warned as to the seriousness of using the threat of contempt proceedings, and in fact it would be better if they were relieved of this power and instead were required to have such matters brought by motion before a higher tribunal for appropriate action.

D.

GENERAL COMPLAINTS ARISING FROM EDITORIALS OR FROM THE HEARING ITSELF

The more serious charges have been dealt with in Sections A, B and C. It now remains to make reference to what might be termed the less serious matters that were covered during the hearing.

1. Quota of Convictions

In an editorial dated April 17, 1967 (Exhibit 6) reference was made to "Providing we come up with our quota of convictions, provide a sufficient number of inmates to fill our new jails . . . then nobody is going to look too closely at how it's all being accomplished." The same editorial also coined the phrase "We must enjoy a good batting average."

When this aspect was gone into by questioning of Mr. Taylor and certain of the police, it became clear that he was really concerned with the over-officiousness of the police. The only concrete example cited was an instance concerning a "speed trap" set up between the Old Town and the New Town. The discussion also covered what was suggested as an excessive number of liquor or intoxication charges in Hay River.

I can find nothing in the evidence to indicate any effort by the police or authorities to lay charges in an effort to build up statistics or to assist in obtaining promotion.

The evidence does indicate that during the past few years Hay River, as has already been described, was going through excessive growing pains resulting from the boom in 1966. This is well illustrated by the astounding revelation that in 1966 the Hay River liquor store sales totalled just over $500,000.00, a figure just below the comparable figure for Yellowknife with double the population. It is clear therefore that such liquor charges as were laid are in large part attributable to the above phenomena.

As to the speed trap, it was used on one occasion at the request of the Town Administrator who was alarmed at speeding in the area. The police were very careful to check out warning signs before setting the trap.

Thus I am unable to find anything to substantiate this allegation or criticism.

2. Excessive Number of Crown Appeals

The same editorial as mentioned in (1) above had reference to successful appeals at Crown expense and during the course of taking testimony it was suggested that "there is a most unusually high number of Crown appeals in the Territories as compared to the number of appeals by an accused".

A tabulation of appeals put in by Inspector Nixon indicates very few appeals of any kind are brought, and there is certainly no large proportion by the Crown. The greater number of appeals, as one might expect, are appeals by convicted persons seeking reduced sentences. These usually come up for hearing before the Territorial Court.

No doubt what has given the impression that the Crown appeals more frequently is that usually Crown appeals are appeals on points of law -- the Crown officers frequently instructing an appeal because there has been a possible error in the lower court. This type of appeal frequently hits the press media unlike the general run of appeal and so the impression of an "appeal-happy" Crown. For example, the "duck case", the recent liquor case

involving a member of the Company of Young Canadians, and the recent appeal involving The Indian Act and the Bill of Rights. On all of these cases the Crown was, initially at any rate, the instigator of the appeal. Because the press media, quite understandably, were sympathetic to the native "underdog" it is not difficult to get a distorted picture of the number and frequency of Crown appeals.

The question of whether this type of appeal should be taken is a quasi-political question resolved by the Attorney General's Department and is not to be blamed on any of the Justices of the Peace, police officers or the prosecuting attorney.

It should be noted here that some appeals have been initiated by the police themselves when they have discovered an error in the local court. It is not uncommon, in this Commissioner's experience, for someone like Inspector Nixon or the Crown attorney, Mr. Troy, to approach the court and suggest that an accused should appeal to correct an error.

There is nothing, therefore, before this Commission to suggest that there has been an excessive number of Crown appeals.

3. Abuse of Contempt Powers

In the April 24, 1967 issue of Tapwe, the editor's page is devoted to an episode that will be called the Strang case. While Mr. Strang was being tried before Rudy Steiner, Justice of the Peace, on a traffic offence, he among others was admonished by the police for smoking while court was in session. This accused defended himself in the case and was sufficiently eloquent on his behalf that Mr. Steiner acquitted him. At the conclusion of the case, however, without any further warning, the Justice of the Peace cited Strang for contempt and had him jailed overnight, the contempt being two-fold -- smoking in court and the manner in which Strang addressed the court.

The question of the right to cite for contempt came before the Territorial Court while the present inquiry was underway. The Honourable Mr. Justice John Parker of the Yukon came over to Yellowknife at the Commissioner's request to hear the case, it being felt the Commissioner should not adjudicate on a subject with which the inquiry was so directly concerned. The judgment of Mr. Justice Parker was to the effect that the Justice of the Peace had the legal power to cite for contempt but that in the

present case he erred in directing the punishment without first giving Strang an opportunity to give his explanation.

Reference has already been made to the Ambedian case which was somewhat similar.

My earlier remarks about possibly restraining the powers of contempt in the Justice of the Peace court apply equally here.

4. Search Warrants

The Tapwe editorial of May 1, 1967 discusses the subject of search, arrest and investigation.

While the content draws the Northwest Territories into the discussion, the editor is really giving his general observations on the subject and appears to have been so prompted by the proposals brought forward by the Canadian Association of Police Chiefs and not by any evidence of abuse in the Hay River area.

I am unable to find any excessive use of these powers by the police in Hay River. The one case gone into re Ambedian has already been discussed. In Part II there will be some remarks directed to this subject in regard to Indians.

5. Condition of Hay River Cells

The April 24, 1967 editorial page in Tapwe, already discussed under other sections, contained certain remarks directed at the cells in which prisoners are detained in Hay River. Such phrases as "uncomfortable and crowded cell", "smell of stale beer and fresh vomit", "a mattress permeated with sweat and urine" are found.

In addition to police witnesses and other general witnesses, including the Hay River Medical Officer, the night guards or Sunday guards were required to give evidence on this aspect. These guards are civilians who are hired on a part-time or relief basis to assist the police and generally are called in to act as guards during periods when persons are being held in custody. This relieves the police for more active duty, and in small communities such as Hay River is a very practical and satisfactory solution to what otherwise could be a serious personnel problem.

The evidence before me seems to show clearly that there were two distinct phases. One -- the period of transition while the R.C.M.P. were moving from the Old Town to the New Town and had to use temporary quarters and temporary facilities; and two -- the permanent

detachment office and cell block area in the New Town now being used.

I am satisfied that the police experienced extreme difficulty during the transition but made the best of it and that no one is to be criticized for any discomfort which may have been experienced.

As to the permanent quarters, again I am satisfied that generally speaking an effort is being made and was being made to keep the cell block and individual cells in good order -- clean and healthy. Dr. Covert who attends frequently to check prisoners gave his opinion to the effect that to the extent that "drunks" or "intoxicated" persons can be housed the police cells at Hay River are adequate and the hygienic steps are satisfactory. There was evidence that indicates, as one would expect, that at times, particularly over weekends, by early morning there is serious overcrowding.

The Commission and those persons such as Inspector Nixon, Donald Taylor, and others attending the hearing were invited to view the cell block. They all got in one of the steel cells or "tanks" at one time by way of a demonstration. There was evidence that on some occasions, rare fortunately, there could be as many as

seven to nine or more arrested persons in one of these "tanks" come Sunday morning after a bad Saturday night. The demonstration pointed up the hopelessness of the situation if this number of persons -- even sober -- attempted to spend any length of time under such conditions.

The testimony also showed the difficulties the police in Hay River suffered under in attempting to keep mattresses clean, floors tidy, and so on -- during peak periods. Unquestionably with the lack of good laundry facilities, and the small supply of mattresses and blankets the detachment appeared to be supplied with, it was to be expected that on occasion there would be a very odoriferous cell block. It was to be expected also that there would be accused persons required to sleep on soiled blankets and mattresses.

I am satisfied that there were instances of this kind over the years but I am equally satisfied that they were not frequent and that the police at Hay River were not derelict here but made the best of the situation.

Given the best of equipment and facilities, which was not to be found at Hay River, there would be some vomit,

some odor of stale beer, some smell of urine, after a busy night. The fact that mattresses are now covered with plastic to facilitate cleaning, and that more than one witness attested to the improved appearance and condition since the editorials and since the commencement of this inquiry attests to the importance sometimes of checking up and indicates that improvement can be made. No doubt the local police authorities have been able to get more liberal allowances of blankets, mattresses and mattress covers thanks to Tapwe.

6. Certain Justices of the Peace Preferred

The suggestion here was that one or two of the Justices of the Peace were used to the almost complete exclusion of the other or third one in Hay River. The inference one was expected to draw was that the police had a sinister purpose in mind, that they preferred one Justice to another, either because he was more likely to convict, or more likely to give a tough fine or sentence. In other words, he was in cahoots with the police.

During the period with which this Commission was concerned there is no question as to which Justice of the Peace did the work.

Of the three, Norman McCowan was to all intents and purposes ignored. Donald Stewart was used infrequently and Rudy Steiner was in reality the one who did all the work.

Mr. McCowan on his own behalf indicated that as school principal with fixed hours and considerable administrative duties, and with his superiors opposed to teachers acting as Justices of the Peace, he considered he was an overflow Justice and no more.

Donald Stewart, now Territorial Councillor for his area, but at that time Mayor of Hay River, indicated that he had requested the police to only call on him when they had to. This was not in any way an unwillingness to do the work but merely his personal wish.

The approach and attitude of the above persons is quite understandable.

The result, of course, meant that if Rudy Steiner, a contractor of some standing in the community, was prepared to do the work, then he would be quite busy. Justice of the Peace Steiner was willing to do the work and did it with great energy.

This man, by his own admission of little education, appeared before the Commission as witness, and sat through all the hearings as an interested observer. He suffered both praise and criticism from some of those who gave evidence. The frequent mention of his name in connection with cases under investigation was only to be expected when the cases he heard numbered in the hundreds.

When the Commission attended on the Indians, this man who is married to a woman with Indian blood, was praised as the person who provided employment for the natives, and at the same time was criticized as being too strict with them.

As the hearings progressed it became apparent to me that Rudy Steiner was one of those "strong men", self-made, and self-reliant, who is a builder and a doer -- the true pioneer type who honestly and conscientiously puts his entire energy and ability into whatever thing he undertakes, a type that is becoming harder to find today.

In the confusion in which Hay River found itself during the last few years of expansion it is not hard to see how a man like Rudy Steiner could not help but emerge

as one of the strong men. In the process of making his way it was equally inevitable that his self-reliant and "stand on your own two feet" philosophy would bring him into conflict with others in the community, people who in their own way felt they knew what was right for Hay River.

As Justice of the Peace, Rudy Steiner got little help from the Department of Justice in Ottawa other than one or two law books. But he was interested in his office and undoubtedly proud of the position -- with the fierce pride that is most commonly found among those who come up the hard way. Not deterred, he went ahead and bought his own law books and studied them. At his own expense, too, he supplied the covers for the court docket, and paid out of his own pocket to have transcripts of his cases typed out. The small fees he obtains from the position of Justice of the Peace certainly would not be the attraction to this man.

On occasion he tried to help persons he convicted by writing to the probation people and as was seen in connection with the St. Arneault adoption case, he tried to prevent what he thought was an injustice.

He was just as critical of the welfare people as one of them, Mr. A. Kloepfer, was of him -- charging Steiner with being vindictive in court and "belittling anyone who appeared before him".

It might almost be observed that the whole of the proceedings in this Commission or inquiry in some manner revolved around Rudy Steiner, Justice of the Peace, Hay River.

Space stops me from saying more about him but I do not apologize for the somewhat lengthy remarks I have directed to and about him. It was inevitable if I was to do justice as Commissioner.

To sum up the position with respect to Rudy Steiner I must say that in the early years he was the perfect choice for Justice of the Peace. He lived in the community, he was one of them, and more than most, could not help but understand the local conditions and the native people and their problems. But the old type Hay River is no more, the new type Hay River is in the throes of becoming a business and commercial centre, and it is stepping out of the frontier era into a more sophisticated way of life. I am not going to say whether the new way will be better or an improvement. It is my judgment,

however, after careful thought, based both on the evidence before me and my observations, that Rudy Steiner should no longer remain as Justice of the Peace. With the divisions in the community of Hay River that are so clearly to be observed, with the insinuations of "family compacts" and so on, and the suggestion that this Justice of the Peace is identified with one of the groups only, it is now necessary to have new blood -- blood not aligned with any factor. In this respect I am making no assertion that Steiner is aligned in any clear way.

I regret that this may appear to be poor thanks to Rudy Steiner for his services to the community as Justice of the Peace, but I think it must be carried out. I am satisfied that this person has conducted himself in his office unselfishly and with the best interests of justice as his goal. When he has appeared to have made mistakes in cases, as discussed throughout this report, the criticism is not of dishonesty, or any impropriety, but merely that his philosophy on how to run his court, how to adjudicate -- and I am not saying whether he is really so wrong or so right -- is no longer palatable.

RECOMMENDATIONS

17. That serious consideration be given to a complete renovation of the police detachment building at Hay River with a view to enlarging the cells and detention quarters so that intoxicated persons can be accommodated separately from others and so as to provide such persons with quarters designed to satisfy peak loads rather than average loads.

18. That new Justices of the Peace be named to replace Rudy Steiner and Norman McCowan using the suggestions set out in Part II, the purpose being to supply Hay River with three new Justices free and clear from any possible stigma that may have arisen from this Commission and who are prepared to take an equal share of the work. (One new one has already been appointed in place of Donald Stewart, he having resigned on election to the Territorial Council).

19. That the police and Justices of the Peace at Hay River be instructed to use a system of rotation in calling Justices of the Peace for duty and that

they resist overloading one or other as has been the case up to now.

20. That the statements made by Dale Archibald, a man used by the police as a special guard, showed an attitude of such disrespect to the native people who might be under his care, that he should not in future be employed by them in any capacity.

P A R T II

ADMINISTRATION OF JUSTICE - GENERAL

It is doubtful if any situation in respect to the administration of justice exists or is present in any community or settlement anywhere in the Northwest Territories that is not also to be found in Hay River. To put it another way, almost every problem that was found to exist at Hay River will likely be found to a greater or lesser degree elsewhere in the Territories.

In the hope, therefore, that what I might say by way of general observation and recommendation in this inquiry, might be of help to the whole Territory, I have chosen to reserve certain general heads for this Part, the intention being that although Hay River forms the specific, the effect on the whole Territory is being considered.

Again it must be remembered that in the more remote parts of the Territories, particularly the Central and East Arctic, the impact of the white man's world and way of life may not yet have arrived with the same intensity as is found in Hay River, but it is being felt and will be felt more and more every day. Who knows, the experiences

encountered in Hay River might be used by those in higher authority with profit -- to minimize the chance of recurrence in other areas. It is surely no accident that in the October session of the Council of the Northwest Territories discussions took place and motions were presented in respect to such topics as legal aid, treatment by police, and abuses in the Justices of the Peace courts.

In preparation for my remarks in this Part, in addition to the evidence taken during the hearings, I took the liberty of making my own private oral inquiries as I made my various circuits throughout the Territories as Territorial Judge. Added to what I learned from such inquiries I am also relying on my own experience of 25 years as a practising lawyer before becoming a judge. The last eight of these years saw me acting on occasion as defence counsel in the Northwest Territories.

It should be appreciated also that in this Part references to Indians should be taken as generally equally applicable to Metis and to Eskimos.

A.

COURT ROOM FACILITIES

1. Buildings

There is no such thing in the Northwest Territories as a Court House, that is, a building which has been designated exclusively for judicial and quasi-judicial work.

In Yellowknife, the legal centre since 1955, the court facilities are located in part of the second floor of a two-storey Federal Building; Inuvik also has a court room in the Federal Building there, and reference has already been made in Part I to the so-called court room located in the Hay River Federal Building. Elsewhere court is held in any space available. It may be a Legion hall, a room in a Northern Affairs Building, Hudson's Bay warehouse, schoolroom, or so on, and on rare occasions even in the plane used by the court party. This generally applies to all courts, including Justices of the Peace, although the latter have and do on occasion use the police detachment offices.

It would not be practicable at the present economic and population level of development in the Terri-

tories to expect the type of Court House facilities that are found in the provinces such as Alberta where, for example, a tremendous effort has been made to properly house the courts. It is desirable, however, if the country's citizens in the north are to have respect for the administration of the laws, and of justice, that those who are required to dispense it and interpret it be as much as possible provided facilities that lend dignity to the proceedings.

The formalities and trappings of court proceedings are important, particularly where, as in this area of Canada, there is as yet such a large population of semi-primitive native people. The Honourable Justice J. H. Sissons appreciated this when he appeared on the scene in 1955 as the first judge of the Territorial Court. He insisted on gowning even in the most remote areas, carrying a portable coat of arms to set up to designate the court, and took with him on circuit a portable flag (donated by the I.O.D.E.). But even this practice, which is still continued, must lose some of its effect when the court and lawyers have to robe in front of the people because there is no room other than the warehouse, etc. available to dress in, or when the jury has to go outside into auto-

mobiles and sit there with the motors running and heater on to keep them warm while a voir dire is held in the single room building used as court, as happened in Fort Smith one winter. Poor toilet facilities are of course notorious in many of these instances.

During the last few months the Department of Justice and Department of Public Works representatives have been exchanging notes and plans with each other and with court officials involving possible court room improvements. It is to be hoped that this liaison and effort continue and that they bear fruit. Such liaison, had it been in effect during the designing of the Federal Building at Hay River, would undoubtedly have prevented the fiasco that that court room has turned out to be.

RECOMMENDATIONS

21. That until such time as a community has developed to the point when proper court room facilities should be built, arrangements should be made to provide some form of facility on a rental basis so that Justices of the Peace can hold court separate from police facilities.

22. That in future when Federal or Territorial Government or municipal buildings are designed and planned in any northern area, the Department involved ensure that if any building contemplated can be made to include some type of court room or assembly room this be done.

23. That whenever a court room facility is contemplated the Territorial and magistrates' courts be contacted for their suggestions and recommendations.

2. Court Room Facilities, Staff and Equipment

The remarks set forth above in respect to buildings could be repeated as to facilities.

Dependent upon what is done in regard to additional magistrates and Crown attorneys consideration will be required concerning the provision of office furniture, chairs for the public, law books, and so on.

It is noticeable that in many cases heard throughout the Territories the local inhabitants show a great deal of interest in the actual trial. Quite often the few chairs provided in the temporary quarters set aside for use as court rooms do not satisfy the demand and

a great many interested spectators are forced to sit on the floor. When it is remembered that one of the best ways to educate these people as to civil and legal duties is to encourage attendance at court proceedings, it seems that it is not asking too much to have a sufficient supply of chairs. Inuvik is one place that comes to mind immediately in this connection. The same would apply to Hay River if the room had been big enough to take additional chairs.

Not only do the Justices of the Peace require copies of the Statutes of Canada, Ordinances of the North-west Territories, and so on, but so do the counsel who travel with the Territorial court and with the magistrate's court. Law books are heavy and it is always a problem for the judge, magistrates and lawyers as to what books can be conveniently brought along. Not infrequently it turns out to be the one left behind in the interest of weight economy that should have been brought.

The inadequacy of court staff, i.e. number of court reporters, clerks, sheriffs and so on has been a problem with the courts in the Territories for some time. Mention should be made that at this moment the powers that be are making an effort to satisfy the problem. This does

not just mean personnel but equipment and living accommodation and a salary scale that is adjusted to compensate for the additional cost of living in places like Yellowknife, which, for example, was 30% higher than Edmonton in 1966.

In this respect mention should be made of the need to revise fee schedules and such things to make it possible to obtain good bailiffs in remote areas. These persons are necessary to permit the Sheriff and Clerk of Court to carry out his functions properly. More often than not the Sheriff or other officers of the court are required to call on the police in the communities to do this work. They do it willingly but as much as possible they should be divorced from it.

One could go on for pages to recite the many problems in the general day to day administration of justice in this vast area, problems now present, and problems which are going to increase in the immediate future, and which should be faced up to now or at least soon. It is intended in Part II to merely mention the more important or urgent matters in an effort to point the way.

RECOMMENDATIONS

24. That whenever court rooms are set up for other than casual use, arrangements be made to provide adequate seating for the public.

25. That wherever court rooms may be located and are designed and designated as such, as at Inuvik and Hay River, arrangements be made to provide a minimum library consisting of such law books as annotated Criminal Codes, Statutes of Canada, Ordinances of the Northwest Territories, and a set of law reports more commonly in use in the Territories such as the Western Weekly Reports.

26. That a program be set up to provide for a representative of the Attorney General's Department to come out from Ottawa at least once a year to Yellowknife for the purpose of reviewing the requirements of all courts, equipment, personnel and otherwise.

27. That arrangements be made to provide court officials such as clerks, sheriffs and their deputies

with special training by sending them to attend annual conventions and seminars as provided in Alberta and that while there they be attached to one of the courts for one or two weeks to observe their procedures and techniques.

B.

JUSTICES OF THE PEACE

1. Appointment

A great deal of testimony was devoted to the method of choosing or appointing Justices of the Peace. The appointment for the present is the prerogative of the Federal Government and generally the choice of who is to be a Justice of the Peace in a given community is made mainly on the basis of recommendations of the R.C.M.P. There is no hard and fast rule here and undoubtedly other factors may on occasion be taken into consideration as well.

It is clear also that in the Northwest Territories, particularly in some of the very remote areas, it is extremely difficult to get a good person, or for that matter any person, willing to take on the job of sitting in judgment on his fellows.

The present system lends itself to the suggestion made during this inquiry that the police picked their man and were motivated in the choice by attempting to get someone amenable to their wishes and more likely to convict.

It may be that the present system may result in the choice having been made by the police for all practical purposes. I am unable to find any serious fault with the present system but believe that it is the only practical one that can be worked out -- particularly with respect to the smaller communities.

RECOMMENDATIONS

28. That in any of the larger centres, where there may be more than one possible choice for Justice of the Peace, in addition to the police report on the persons being considered, the appointing authority also get the opinion or assessment of the Commissioner of the Northwest Territories, the Crown attorney, and the President of the Northwest Territories Bar as to which person should be chosen.

29. That consideration be given to making the appointment for a fixed time in each case, say two or five years, so that the question of suitability in the position can be reassessed periodically.

2. Instructions and Assistance to them

It is shocking to find that for all practical purposes once a man is appointed a Justice of the Peace in the Northwest Territories and is supplied with a book on criminallaw, he is then for the most part left to his own resources. There appears to be no serious attempt to circulate new legislation or new court decisions, and no attempt at instruction as to how to do the job. At the last Justice of the Peace Conference held in Yellowknife it came out that the Federal Government was perhaps unsure even as to who all the justices were.

The Attorney General's Department in Alberta provides, by contrast, a series of loose-leaf books containing forms, statutes, decisions and advice and instruction and it is kept up to date for the justices and magistrates.

In an attempt to assist here Magistrate P. Parker, of Yellowknife, three years ago, set up a conference of Justices of the Peace which Justices of the Peace from the western part of the Territories attended. Lectures, talks and panel discussions by judges, members of the Bar and others provided some form of instruction. The Federal Government provided a financial grant to help promote the

conference. It was repeated in 1967 with obvious success and benefit to the Justices of the Peace.

RECOMMENDATIONS

30. That immediate arrangements be made by both the Department of Justice and the Territorial Government to provide a speedy and complete circulation to each Justice of the Peace, certified copies of all legislation, Orders-in-Council and Regulations emanating from their respective governments.

31. That publications and other books of instruction as well as digests of important cases somewhat along the line of those provided in Alberta be supplied to the Justices of the Peace.

32. That the Justice of the Peace Conference be made an annual affair, continued under the chairmanship of Magistrate Parker, and that the grant be enlarged so as to permit Justices of the Peace from the Central and East Arctic to attend.

33. That in order to assist Magistrate Parker to make the most out of these conferences, the Department

of Justice make it possible for him to attend on a regular basis the magistrates' or equivalent conference put on in Alberta, and the Canadian Bar Association Convention, if he is prepared to go.

3. Pay of Justices of the Peace

In the Northwest Territories the presiding Justice of the Peace receives as his remuneration certain of the costs as part of or along with the fine. In essence this means that he only gets paid for guilty pleas and convictions and receives no payment if he acquits an accused person. True, some of these men are probably not a bit interested in the amount they receive but the possible inference such a system lends itself to cannot be discounted.

This system is barbaric and hardly needs this Commissioner's remarks that it is to be totally condemned.

RECOMMENDATIONS

34. That a complete revision take place with respect to expenses and remuneration of Justices of the Peace and a new system of pay be introduced whereby their clerical and stenographic and other expenses when incurred are paid by the Government and where the

pay for their services is covered on a fee basis of so much per case or on an honorarium basis if the volume of work is not very great -- in neither instance to be in any way dependent upon the outcome of the case.

4. Court Hearings

In Part I and elsewhere there has been enough comment on this aspect.

RECOMMENDATION

35. That as much as possible the Justices of the Peace should be encouraged to hold their court at regular times, always open to the public (unless the particular law involved says otherwise) and at a place away from the police detachment.

5. Jurisdiction

For almost 600 years in countries where the administration of justice has followed the English Common Law tradition, and Canada is one of them, the Justice of the Peace has been the medium used to:

(a) keep the peace;

(b) ensure the arrest and imprisonment of offenders;

(c) imprison or arrange bail of suspected offenders;

(d) hear and determine minor criminal cases and trespasses done in the country.

They have for the most part done their jobs well and this applies to the Northwest Territories both past and present.

It has been suggested to this Commission that the powers of trial and conviction be taken away from the Justices of the Peace and be turned over to magistrates with legal training. I will have something to say further on this under the heading "Magistrates". I do say now, however, that in my opinion, subject to what is set out with respect to "Magistrates", the time has not yet come when the Justice of the Peace can be done away with. He fulfils a very useful function. The Northwest Territories covering as it does almost one-third of Canada's land area and containing a great number of scattered and small communities could not in my opinion receive the speedy and practical down-to-earth handling of minor offences that affect the day by day lives of its citizens except by the continuation of the system of Justices of the Peace.

R E C O M M E N D A T I O N S

36. That for the immediate future in most parts of the Northwest Territories the governmental authority continue to use Justices of the Peace as they are presently used.

37. That Justices of the Peace be encouraged to turn over contested cases to the magistrate whenever practicable.

C.

MAGISTRATES

Almost every serious submission to this Commission was unanimous in its praise for the work being carried on throughout the Northwest Territories by Magistrate Peter Parker, and similarly unanimous in requesting that another magistrate of like calibre be appointed.

No one could work harder and more earnestly apply himself in the execution of his duties than Magistrate Parker. At great sacrifice to his personal life and comfort this man spends a good half of his time travelling throughout the country holding Magistrate's Court and trying Juvenile, Welfare and Small Debt cases. When he is

not on a "circuit" he is certain to be in his office at Yellowknife and it is a rare day indeed if he does not have to hold a hearing of some nature.

In his characteristically self-effacing way, while giving his very worthwhile testimony before this Commission, he admitted that he thought he was at the point where any increase in the work for his court would be too much for him. My observation is that he is already grossly overloaded and that in the interests of his health, if nothing else, he should be given the assistance of another magistrate as quickly as possible.

The magistrate has jurisdiction extending throughout the whole of the Northwest Territories. This provides this area of Canada with something that, except for the Yukon, must be unique -- namely, one court at the magistrate's level with consequent uniformity in the application of the law and in sentencing -- a most desirable situation.

Indications suggest that if the trend in this part of Canada continues, that is, a 35% increase in court business on the average in each of the last two years, then there can be no doubt that relief must be obtained.

Some witnesses suggest that a lay magistrate, or that lay magistrates, be appointed locally. Others, such as Donald Stewart, submit that a legally trained magistrate located at Hay River should be considered. The Bar Association argues for a magistrate to be based at Yellowknife but be placed on circuit in the same way that Magistrate Parker operates.

I do not feel strongly on the subject and can see arguments either way when it comes to the problem of where the magistrate is to work from.

If the new magistrate is to operate from Hay River, where, it is argued, he could service Fort Smith, Fort Simpson and the surrounding areas as well, this would probably keep one man pretty well occupied. It would leave Magistrate Parker free to cover the rest of the Territories with less pressure and strain.

On the other hand, the above arrangement would undoubtedly add to administrative problems such as the requirement of a duplicate set of court officials, an extra court reporter, additional court and library facilities, and so on. If the new man was to serve as Magistrate Parker's relief or deputy but from Yellowknife certainly economies in such things as staff could be worked out -- for a time anyway.

RECOMMENDATIONS

38. That immediate consideration be given to the appointment of a second legally trained magistrate for the Northwest Territories.

39. That for purposes of administration Magistrate Parker be given a new designation, such as Chief Magistrate, and the new man be given a suitable designation.

40. That until such time as duplication of staff, court reporters, and other services appears to be required, the second magistrate be located at Yellowknife, but that he be given to understand that if the present growth in court work continues in the Hay River area he will be expected eventually to locate and operate from there.

41. That the salary payable to Magistrate Parker be increased to place him in the position where he is on a par with magistrates of his calibre in jurisdictions such as Alberta, and in this connection the additional discomforts and sometimes hazardous aspects of his position as a "circuit" magistrate be given special consideration in fixing the new rate.

D.

CROWN ATTORNEY

Until sometime in the fall of 1966 the functions of the Crown Attorney or Crown Prosecutor were very ably performed by individual members of the Bar of the North-west Territories living at Yellowknife. Presumably thinking there would be economies in appointing a full-time Crown Attorney and probably remembering the suggestion contained in the Glassco Report, as of the fall of 1966, a full-time Department of Justice employee, Mr.O. J. T. Troy, was sent out as Crown Attorney.

It should be noted in passing that this appoint-ment had the indirect but beneficial effect of relieving the other lawyers for defence work at a time when their services in such capacity could be so used and were required.

Mr. Troy has thrown himself into his new posi-tion with tremendous zeal and energy. He is in the diffi-cult position, however, that, even if he did not have administrative work, the obligation to advise the police from time to time, and the need to prepare his cases, but had only to appear in court, he would find himself in an almost impossible situation. The magistrate is almost

fully occupied and of course the Crown Attorney is required to process most of these cases. Then the Territorial Court is kept adequately busy with Mr. Troy required there too.

It is to be noted here that the magistrate and the Territorial Court divide the calendar so that Mr. Troy will only have to appear in one court at a time. As the work increases it is not hard to see what is happening and what is going to happen to even the most energetic Crown Attorney. This Commissioner has knowledge of Mr. Troy coming into Yellowknife at two o'clock on a Sunday morning from a court circuit to Inuvik only to be found with a heavy docket at ten o'clock the next morning in magistrate's court.

RECOMMENDATIONS

42. That the Department of Justice as quickly as possible look into the question of providing assistance to the Crown Attorney:

    (a) By providing a full-time assistant Crown Attorney; or

    (b) By appointing some other member of the Bar of the Northwest Territories, preferably one from Alberta, as a stand-by Prosecutor who could be sent in to the Territories one or two months a year to assist in the prosecutor's work.

43. That consideration be given to the advisability of employing some person with court experience (an ex-policeman on pension would be ideal), to act as a prosecutor's clerk, to assist in administration duties, prepare informations and subpoenas, and perform other duties of a similar nature so as to leave the Crown Attorney free to concentrate on his more important duties.

E.

CIVIL PROCEEDINGS

As yet the difficulties of providing adequate services in the courts in the Northwest Territories in civil matters, small debts, matrimonial cases, and so on, have not caused too much inconvenience. The increase in population and in the economic growth that is presently being experienced, if it continues at its present rate of growth, cannot help but put a serious strain on the efforts of all concerned to provide satisfactory service.

It is quite clear from the evidence before this Commission that even in Hay River which is not too far removed from Yellowknife or Edmonton, the difficulties being experienced by ordinary people in getting legal help or work done on matters such as probate of wills, convey-

ances of property and similar things are causing distress.

Whether some form of Civil Legal Aid should be provided for by one or other of the governments in the Territories is not for me to say. Both magistrate and judge while on circuit try to allow solicitors travelling as defence counsel time to see private clients and do civil work other than court work when it can be fitted in.

What is really needed however is easier and more frequent access to members of the legal fraternity by the public so that causes of actions such as negligence actions, and similar types of action, are not lost by delay. The only way I can see this need satisfied to some extent is to increase the remuneration to be paid to lawyers retained on criminal cases and make it part of the terms of the retainer while they are on circuit that when the criminal work is done the lawyer is to consider that his services are to be still available for consultation on civil and quasi-civil matters.

It is to be observed that Magistrate Parker and I have already undertaken to assist in this regard by holding meetings after court in remote communities if requested, at which the functions of the court and a general review of legal problems will be explained to any members of the public who may be interested.

R E C O M M E N D A T I O N

44. That police officers and government administrators throughout the Northwest Territories be circulated on a regular basis by their respective departments and told that if they know of any people with possible legal problems, or hear of any such problems, they should advise the Clerk of Court at Yellowknife so that if the matter requires court attention it can be checked out on the next appearance of the court party.

F.

LEGAL AID IN CRIMINAL MATTERS

Population figures show that the largest group in the Northwest Territories is the Eskimo, next we have the Indians and finally the Whites. It can be said that the only group with any real economic base or income is that of the Whites. Accordingly, if no form of government sponsored legal aid was provided, then by far the largest sector of the population would go unrepresented in the criminal courts.

In the more populated areas of Canada, and the same would be true of the United States, for a great many years the need for a system of legal aid to indigent persons caught in the toils of the law was met pretty well by well-meaning lawyers taking their time to act for people in need. Because only serious cases were serviced, and these areas had enough lawyers, it meant that a lawyer normally might only have one or two cases a year -- not too onerous a burden to bear. Even today, with legal aid plans being introduced throughout the country, some lawyers believe the work should still be done on a volunteer basis rather than on a fee basis.

Because the volunteer or free basis usually results in the younger members of the profession doing the lion's share of the work it has become the recognized thing that a legal aid system can only work, that is one that is truly comprehensive, if some remuneration is paid.

In Alberta, for example, the Attorney General's Department provides funds to pay a basic or minimum fee schedule and supplies secretarial services while the legal profession runs a roster of lawyers which includes the greater number of the profession. No one can get rich on legal aid but the system at least tries to provide suffi-

cient monies to more or less compensate for time out of the office, while at the same time it does ensure that no one in Alberta need go unrepresented in the criminal courts.

It is not proposed to review the Alberta or any other provincial system in any more detail. The main point is that even in a province like Alberta where the proportion of indigents to people able to pay is quite low it has been found necessary to provide adequate (if minimal) compensation to those lawyers who provide the service.

In the Territories the proportion of potential legal-fee-paying people to non-paying is in complete reverse. The Commission's assessment would be that at lease 75% of the population of the Northwest Territories would qualify for legal aid if the Alberta tests were applied. To take it a step further, by far the larger number who require legal advice and assistance, certainly in criminal and quasi-criminal matters, would be found among the 75% group. For the lawyers of the Northwest Territories resident at Yellowknife to be expected to provide legal counselling for this group means therefore that a greater proportion of such lawyers' time will be

required on the legal aid part of their practice than on the paying parts, and of course while on legal aid cases they may be losing or neglecting the other.

To date the service has been cheerfully given by the few lawyers, five in all, based at Yellowknife, supplemented on occasion by lawyers from Alberta appointed for specific cases. But as the cost of running law offices in the North continues to rise, the above happy situation cannot be expected to continue. Time away from the office on circuit is also a factor not normally experienced in the provinces.

It should be pointed out that actually legal aid as such is not officially recognized in the Northwest Territories in the sense that there is no system as in Alberta in effect. The present policy is for the court, magistrate or judge, to allocate counsel to any indigent person who asks for counsel or where the court deems it appropriate. The test of need and the test of indigence is very liberal in this regard. The Department of Justice has taken a very realistic and sympathetic approach to the problem and this Commissioner has no knowledge of any court appointment not being honoured.

Mention should be made here that the police themselves have on occasion recognized the need for defence counsel in serious cases, as also has Crown counsel, and in each case the court obliges.

In the brief put before this Commission by the Bar Association the problem was not that the government is not recognizing the system but rather that the rates paid are unrealistic in relation to the conditions to be encountered in the Territories, some of which have been outlined above.

In essence if a lawyer takes an appointment to act as counsel for an indigent person he is paid at the rate of $75.00 per day plus disbursements for every day away from his office if out of town -- that is away from Yellowknife. If he takes such an appointment on a case being tried in Yellowknife he receives $15.00 per hour up to a maximum of $75.00 per day. No payment is provided for preparation -- the remuneration being only payable for the actual appearance. Any experienced member of the legal profession will agree that many cases -- of short duration in court -- are won in the lawyer's office or library. Also a lawyer may spend eight or nine hours in briefing his client, in interviewing witnesses, and checking out the law, only to reach the conclusion, that

could not be arrived at until he had done the preliminary work, that the best he could do would be to go for a guilty plea, perhaps on a lesser charge. This is to be encouraged. That there is no payment for this preliminary work is incomprehensible. To run a law office at Yellowknife costs each lawyer at least $75.00 per day according to statements made by the solicitors.

RECOMMENDATIONS

45. That the Government of Canada (and the Territorial Government whenever it shall assume responsibility for justice) give formal recognition to the principle of legal aid for indigents in the Northwest Territories and lay down the ground rules so that it becomes recognized as a matter of course rather than dependent on court appointment.

45. (a) That any such legal aid as may be set up be based generally on the system as used in provinces such as Alberta but adapted to the peculiar conditions to be encountered in the Northwest Territories and that special attention be given to ensuring payment of reasonable outlays for expert witnesses who may properly be required for the defence.

(b) That it would be a fatal decision to attempt to provide the services of defence counsel by the appointment of a Public Defender -- one can see only too readily what the people in the small communities would say about a system of justice where the Crown Attorney, the police and the defence counsel formed, in appearance certainly, one tidy little group, all in the direct employ of the Crown.

47. That in any event the per diem rate of pay be increased from $75.00 to $125.00 per day while a lawyer is away from Yellowknife and that no deduction be made for partial days encountered in travelling.

48. That in any event the rate per hour for appearances in court be increased from $15.00, or such other rates as are presently payable, to $20.00 per hour, up to a maximum of $125.00 per day, and this to cover any type of appearance and any court, including such things as bail applications.

49. That counsel be paid for reasonable preparation at the rate of $15.00 per hour, to be chargeable after the first two hours in respect to any case.

50. That if the government follows the first recommendation and patterns its legal aid system after the

Ontario one (this Commission understands this may be under contemplation), before any such system is promulgated it be submitted to the Bar Association of the Northwest Territories, the magistrate and the Territorial judge so that the experience gained in service in the North can be applied to make the scheme workable.

G.

THE ROYAL CANADIAN MOUNTED POLICE

A person travelling around the Northwest Territories as a lawyer or as a judge, even for a short time, cannot help but be impressed by the tremendous work being carried out by the Royal Canadian Mounted Police. The exemplary discipline and good esprit de corps is evident throughout the Northwest Territories.

Particularly in the more remote communities the "Mounties" carry the flag for almost all branches of the government. Not only do they handle normal police work but they have been required in many cases to look after such matters as vital statistics, health surveys, and a multitude of other things.

At times during the inquiry the police have come in for some criticism, and in some instances the Commissioner's remarks in this report may not always be completely complimentary. Also when recommendations are made in respect to their work this alone may be taken by some people as criticism or censure of the force.

I want to make it clear, therefore, that my experience and my observations satisfy me that Canada in general and the Northwest Territories in particular are fortunate indeed to have such a fine, well-trained and dedicated force at their disposal. When such topics as discrimination, legal aid and other related subjects come under review as in the present inquiry, the great service the police render to society must never be lost sight of. We must not lose our sense of proportion. In 1968, perhaps more than ever, it should be apparent to all thinking people that this thing we call civilization is a pretty thin veneer after all, and it does not take much for criminally inclined forces to infiltrate our systems and take over. Honest and independent justice is the great protection, but it is pretty helpless without honest and effective police.

Perhaps the best way to conclude this topic is to quote from a letter filed as part of the record in this inquiry (Exhibit 22), a letter setting out a resolution of the Town Council of Hay River, as follows:

> " . . . the Town appreciates the work the Royal Canadian Mounted Police have done and are doing in Hay River and to express a vote of confidence in the continuing operation of the force."

RECOMMENDATIONS

51. That until towns such as Hay River and Yellowknife greatly increase in population, the R.C.M.P. be retained as the police force.

52. That the practices set out below and sometimes but not always followed by the police with respect to persons taken into custody on serious offences, or convicted by justices of the peace, be made the subject of a directive to each detachment:

    (a) Applications for bail, if turned down by the local authority, be reported to the Clerk of Court, Yellowknife, if the accused person requests a review.

    (b) If an accused person is charged with a serious offence and a lawyer is not available in the community, the Clerk of Court at Yellowknife be contacted by phone or wire if the accused requests counsel.

(c) The practice of having appeal forms available and of assisting the convicted person to appeal be continued and be made general if not already so.

(d) That, except in communities with a Court House and court officials, the police continue to collect fines levied by justices of the peace courts or other courts.

H.

INDIANS, ESKIMOS AND THE LIQUOR PROBLEM

It is not for the Commissioner to moralize or become involved in matters political in this report if that can be avoided. Remarks in this report may at times have a flavor of politics albeit non-partisan, but this is unintentional and only because one cannot adequately treat on the subject of administration of justice without dealing with the human beings who not only form the victims but are also the participants.

Policemen are human, lawyers are human, justices at any court level are human, or should be, the victims of crime are human, and the persons who commit the crimes or who break the laws are human. So too, the people who make the laws are human. Man is a political animal, so in this sense and with no further apology, as Commissioner I shall attempt to express a few thoughts and make some

recommendations under this heading. It should first be made very clear that I am not trying to in any way say that I have all the answers or that I am right in every respect. But it is hoped that what I say here may help to point the way for further and better efforts at finding a solution or cure. It is feared that if some solution is not found quickly that the next ten years will see a complete generation of as yet unsophisticated young Indians and Eskimos, now eagerly attending government schools, pass through the courts of the Territories. This result surely must be avoided at all cost.

Since part of our "emancipation" of the native population is involved in the so-called civilizing process, our governments at every level are busily engaged in spending great amounts of money to alleviate conditions, to build hospitals, to bring relief to distressed native people, and to educate their children. We also show they are equal by permitting them to buy liquor and such fine things, just like Whites. With all this going on, people find it hard to understand why the incidence of crime is so high among these people, and cannot understand why they do not seem to be able to work or establish themselves as the Whites do.

In earlier parts of this report reference has been made to the high proportion of liquor offences among the Indian population at Hay River. The same would be found to be true in other parts of the North. Liquor or intoxication is a factor in almost every case that comes before the courts -- Indian, Eskimo or White.

When the Commission attended at the Indian Village and invited discussion, by far the biggest problem discussed was liquor. Territorial Councillor Donald Stewart mentioned how he first started out as a Justice of the Peace with the idea that the natives and their drinking habits could be handled just as a parent would handle a child -- admonish the first time, and gradually increase the punishment until the child got the message. Accordingly he started with small fines, went to larger fines, then small jail terms and finally graduated to heavier sentences. All to no avail. The same ones came back. Some witnesses suggested that the Indians often deliberately took the jail alternative to save the fine with which to buy more liquor, others that to go to jail meant very little or no social stigma, one witness even suggesting that some of the young men felt like heroes if they got in jail.

It seems to be quite apparent that fine or jail does not stop drunkenness. It seems equally clear that almost all of the criticism of the administration of justice at Hay River when reduced to its bare bones arose out of liquor offences and the method of handling, both by the police and by the Justices of the Peace.

Inspector Nixon pointed out how unpleasant it was for the police to have to enforce the drunkenness provisions of the Liquor Ordinance but also how important it was to take these people off the street -- for their protection and for the public's protection.

Justice Hennig Bronsted explained that in Greenland, where he presides, they have the identical problem, and that they make no attempt to "punish" the drunk the next day but let him out when he is sober. He described also how the Greenland authorities try to educate and provide treatment in this field, one method being for the court to order the person to take pills or medication to spoil the person's appetite for liquor.

At the Indian Village it also came out loud and clear that the Indian who had the misfortune to be arrested felt lost in jail, didn't always understand the procedures in the Justice of the Peace court the next morning, lacked

interpreters, had no one to represent him, and very often felt the only solution was to plead guilty and get it over with.

Let's look at it from another direction. A white man comes before a Justice of the Peace the "morning after" and has a job to go to. He has a wife and children to feed. The presiding justice, being reluctant to cause loss of employment, almost invariably gives a fine. But if it is an Indian or Eskimo the picture is different. The presiding justice probably knows full well the man has no work and that the Indian is probably on welfare. If he fines the man he may take his wife's welfare cheque to pay it, and so the family suffers more if the man is fined than if he is incarcerated. Or, as one of the constables testified, if the accused is a native woman she may sell herself to pay the fine. It is small wonder therefore that the judgment in such cases is often jail without option of a fine. Small wonder, also, that in some quarters there is a feeling of discrimination, even if it is not so.

Let us remember also the evidence, equally clear and understandable, of how the police so often feel obliged to arrest the Indian because he may freeze to death or because he may get into trouble, where, if he were white, he would probably have had enough money to taxi home and avoid being picked up.

Without any land to call their own the native feels a further indignity when the police walk into his home without the formality of search warrants both to arrest and to interrogate. The police are merely relying on the authority they understand is to be found contained in the provisions of such statutes as the Indian Act and they cannot be condemned. But over the years an attitude undoubtedly developed here that leads to the suspicion that the Indian or the Eskimo is not accorded the respect by the authorities that the same authority would normally show whites. It is this failure to treat the native with dignity that perhaps more than any other single thing has given some support to the suggestion of discrimination.

From the time of interrogation or arrest, through the process of being jailed, up to his trial before the Justice of the Peace, the native finds himself more or less buffeted from one person to another, only half understanding what is being said to him. It is difficult for any police force to handle accused persons in numbers and just as difficult for the Justice of the Peace to hear the hundreds of these cases, as they do, without some loss in the human approach.

Another side of the same story, all too common, is the case of the first offender on some more serious offence. It is in my opinion particularly serious when a first offender comes up for sentence. If he goes to jail he may come out a hardened criminal or with more of a prejudice against law and order than ever before. Jail should in this Commissioner's opinion be the very last alternative. But what happens if a suspended sentence is to be considered? An actual example that occurred in Hay River recently will perhaps illustrate the problem faced by the court. A young Indian about 18 years of age with say Grade 6 education pleaded guilty to theft. The court asked the Probation Officer if the boy could get work. The answer was that there was no work available for such a boy. The answer was not that the boy wouldn't work, it was that there was no work. When asked by the court if then he could as a condition of suspension be sent to some training school or vocational school the court was advised again that the answer was no, this being because the boy did not have a high enough education to even get vocational training. The educational authorities are trying to help but the communication here is still too remote. Mr. Burgess,

in charge of vocational training at Yellowknife, has indicated that plans are now underway whereby an accelerated upgrading program leading to trades or occupations will be set up in Yellowknife by sometime this spring. It is to be hoped this pilot plant will be expanded throughout the whole territory.

Last October an Eskimo of very little formal education but obvious ability, Victor Allen of Inuvik, addressed the Fourth National Development Conference. His plea was for help to those thousands like himself who are willing to work, who could be useful, but are not acceptable because they lack formal education. It was not long ago that even in Alberta people without formal education could get into almost any occupation if they demonstrated the ability to do the job. There are lawyers still alive in Alberta who did not have adequate academic qualifications by today's standards, but they were not held back. What Mr. Allen pointed out, among other things, was that perhaps it was not right, certainly it was too soon, to apply such strict academic qualifications in the North -- unless this still healthy and young generation was to be lost or wasted.

It may be all right to take young children from the teepee and from the igloo and teach them the three "R's" and carry them along through high school, so that we can point with pride to how they have been educated. It is certainly wrong I believe to stop there and expect them to go back to the teepee or the igloo with their diplomas and pick up where they left off. Job training is a must and it may even be necessary to manufacture jobs. The money that is being used and that certainly will be used for welfare payments and to staff our jails, or as they now call them, correctional institutions, would be better used to create jobs if for no other reason than to restore self-reliance and pride to the native people. In other words, let it be spent before, not after; for prevention, not detention.

On January 9, 1968 the Edmonton Journal carried an editorial on the Indian Drinking Problem. I do not think it would hurt to quote a few passages from it:

> "The Indian hasn't had decades of experience with controlled drinking. He hasn't had time to build anything like the white man's invisible network of customs and attitudes to keep liquor under control. Add to that the fact that alcohol strips away his inhibitions and exposes his bitterness at his second-rate status, and you have trouble."

> "In the long run, the only solution is a serious attack on the culture of poverty in which the vast majority of Alberta Indians live. In the short run, there must be better control of abuses."

> " . . . there should be a concerted attempt by all governments -- and business and labour -- to provide jobs and opportunities for the native population."

It is perhaps worthy of note that in the United States of America the report by the "President's Commission on Law Enforcement and Administration of Justice" has this observation to make with respect to what society's efforts to control and combat delinquency should be:

> "The first and most basic -- indeed, so basic that delinquency prevention is only one of the reasons for it -- involves provision of a real opportunity for everyone to participate in the legitimate activities that in our society lead to or constitute a good life: education, recreation, employment, family life. It is to insure such opportunity that schools in the slums must be made as good as schools elsewhere; that discrimination and arbitrary or unnecessary restrictions must be eliminated from employment practices; that job training must be made available to everyone; that physical surroundings must be reclaimed from deterioration and barrenness; that the rights of a citizen must be exerciseable without regard to creed or race."

The same report in its treatment of "drunkenness" states:

"The Commission seriously doubts that drunkenness alone (as distinguished from disorderly conduct) should continue to be treated as a crime."

RECOMMENDATIONS

53. That consideration be given to changing the whole attitude towards drunkenness so that it ceases to be treated as a crime.

54. That the Liquor Ordinance be amended to permit the arrest of an intoxicated person, regardless of his colour, for his and the public's protection, but that on his being brought before the Justice of the Peace the next morning he be released if the Justice considers the arrested person is sober and can safely be released.

55. That consideration be given to providing a rehabilitation centre in the Territories for treatment of alcoholics or near alcoholics and that the Liquor Ordinance be amended to empower the justice to commit to that institution any person coming before him with a degree of frequency to suggest he is an alcoholic or near alcoholic.

56. That the safety of the public continue to be protected by retaining provisions in the Liquor Ordinance making it an offence to cause a disturbance, and similar types of offence.

57. That interpreters be made readily available in the Justice of the Peace court and provided at government expense so that there can be no doubt that a native accused understands the nature of the proceedings.

58. That a system be set up in each community whereby a native accused person being brought before a Justice of the Peace will be represented by some person of standing in the community -- a friend in court as it were. This person should be paid on a fee basis dependent on the number of appearances and should be a native if the majority of the persons being charged is normally native.

59. That the "friend in court" referred to in the above paragraph be given some instruction in what he can and should do to help. The courts are prepared to help here.

60. That until such time as legally trained magistrates can be located in areas outside Yellowknife, the establishment of the above system should be given top priority. That consideration be given to making this system available in cases involving the taking away of children from their mothers under the Child Welfare Ordinance where the order is intended to have permanent effect.

61. That arrangements should be made in respect to the native people that when an Indian or Eskimo is arrested and being charged with an offence, his chief, or family, or someone in his village or encampment be notified as quickly as possible.

62. That in Hay River, in particular, the police work out a system of more regular patrols in co-operation with the Indians themselves and that some form of telephone connection with each of the Indian villages be arranged to cover emergencies.

63. That a more strenuous effort be made to attract natives with adequate education to become members of the Royal Canadian Mounted Police.

64. That a greater number of what are commonly called special constables be employed and made use of with a view to encouraging and teaching the natives to attend to the law enforcement in their own communities themselves.

65. That a greater effort be made to appoint capable Indians and Eskimos as Justices of the Peace, particularly in those communities where they form the greater number, for the same purpose as above.

66. That with respect to both special constables and native Justices of the Peace as mentioned above, they be instructed and permitted to carry out their respective duties equally against whites as against their own people, it being the Commissioner's opinion that when a white man is and can be arrested by a native policeman or is made to appear before a native Justice then the impartiality of our system of justice will have been demonstrated.

67. (a) That the present embryo but well-intended probation facilities be expanded so as to provide for permanent officers in such population centres

as Hay River, Fort Smith, Cambridge Bay and so on, and so as to provide a serious and practical type of vocational or job-training with emphasis made on convicted persons in their care being (where considered safe) allowed during daytime to do apprenticeship work outside the institution.

(b) That to assist the courts and the probation services, the medical services that are functioning so well in the North be expanded to provide the services of a full time psychiatrist in the Territories as soon as possible.

68. That as quickly as possible arrangements be made to separate young convicted offenders from others to prevent contamination, and that perhaps consideration should be given to keeping prisoners receiving penitentiary sentences within the Territories, it being this Commissioner's view that there are no <u>real</u> criminals of the hardened type as yet within the Territories and as much as possible this desirable situation should be maintained.

69. That consideration be given to amending the Northwest Territories Act and other statutes where required to permit more freedom in the Territorial Courts of all levels in the provision of suspended sentences and variations of same.

I.

ATTORNEY GENERAL FOR THE NORTHWEST TERRITORIES

Under the existing constitutional arrangement the Minister of Justice and Attorney General of Canada is by virtue of his office also the Attorney General of the Northwest Territories. It is his Department that is charged with the responsibility for the administration of justice throughout the North. At the same time the responsible authority for the Royal Canadian Mounted Police is the Solicitor General of Canada. At the local level the Attorney General is represented by a full time Crown Attorney who in addition to his prosecuting duties acts as a direct liaison with his Ottawa Department.

In actual practice of operation the necessary chain of command results in a fully trained lawyer or lawyers in the Department of Justice carrying out the functions and exercising the real authority of the office of Attorney General. If the problem is legal there can be no doubt but that it receives the best attention that could be expected as these Department men are dedicated lawyers. If the problem is accounting or personnel it will receive attention by the accountants or other members of the same Department equally efficient and expert in

their respective positions. It is suspected, certainly by people in the Territories, that only the decisions of the highest political nature ever reach the office of the Attorney General himself. The submissions are unanimous that those making the day by day decisions for the Attorney General (of the Northwest Territories) no matter how earnest and conscientious they may be, are, or appear to be, incapable of giving proper or correct judgments because they lack the practical experience with and the personal knowledge of the problems of the north. Also their very remoteness from the field and possible preoccupation with matters concerning other parts of Canada is assumed to be one of the reasons why, according to the local complaints, there is such lack of communication and delay in action on local problems.

In respect to the police, the chain of command is from the Solicitor General down through the various divisions and subdivisions with an R.C.M.P. Inspector or Sub-Inspector at the subdivision level, and the Territories are divided into four such subdivisions. It is to be seen, therefore, that at the latter level there is an officer in the area and he in turn works through

non-commissioned Commanding Officers in each detachment located in each community.

The office of Attorney General of Canada does not appear to operate quite in the manner that the office is operated and functions in the province, where the Attorney General, a member of the Cabinet, through a Deputy Minister (a full time civil servant) exercises direct authority over both the prosecuting branch and the police branch. This coordination combined with the proximity to and accessibility to a politically responsible minister means that in the province, unlike the Federal Government, the office of Attorney General is more likely to be attuned to the needs of the community and more readily responsive to its temper.

It was suggested to this Commission that the office of Attorney General be transferred to the Territorial Government. The most carefully worked out submission was by the Bar Association and it would have the Commissioner of the Northwest Territories assume the duty and function.

No doubt the time will come when the Territories will have developed to the extent and its local Territorial Government will be considered mature enough so that

the Federal Government will deem the time opportune to transfer the administration of justice to the North and with it, the office of Attorney General.

RECOMMENDATIONS

70. That immediate consideration be given to the desirability of setting up a new office in the Department of Justice at Ottawa to be designated: Assistant Deputy Attorney General of the Northwest Territories.

71. That the new officer mentioned above be named from one of the lawyers in the Department, and be given his own staff, and be given the full responsibility the new office demands.

72. That all remaining services such as accounting, personnel, and so on, insofar as they may relate to the Northwest Territories be required to communicate through the new Assistant Deputy Attorney General, whether new persons be employed or whether the same persons continue to provide the services.

73. That the whole operation as recommended above be predicated on the Government's recognition that the people of the Northwest Territories are entitled to look to one person only as the person responsible for the day by day duties and functions of Attorney General and that he in turn is to be freed of other legal duties so as to devote his full attention to his new office. This should provide good experience and intermediate training for the day when the Attorney General shall come home to the Northwest Territories.

74. That both the Minister of Justice (as Attorney General of the Northwest Territories) and the Solicitor General should make an on the spot examination of the facilities presently being provided and used throughout the Northwest Territories to see conditions for themselves, and their itinerary should include some of the Eastern and Central Arctic communities.

P A R T III

GENERAL CONCLUDING REMARKS

I should like to close this report with the general observation that while a few years ago the various governmental departments and agencies concerned with the Northwest Territories and the native population located therein suffered a great amount of adverse criticism for lack of attention to the problems that were there and for obvious neglect, it is my opinion that this no longer applies.

Everyone seems to now be trying to make up for lost time. There are undoubtedly more dollars being spent per person in this area and more effort being taken to correct things than in other parts of Canada. All that seems to be necessary now is that more care be exercised in the allocation of funds and to ensure that the effort is in the right direction. It is not for this Commission to say more here other than to observe that almost invariably the economic and social problems show up at some time in the cases before the courts.

The undersigned desires to express his thanks and appreciation to Inspector H. T. Nixon for making available to this Commission police documents and records bearing on the matters in question and for his ready assistance in calling police witnesses. I thank also David C. McDonald for his most capable and valuable assistance as Commission Counsel. I express my thanks, as well, to V. N. Morris for his competent services as Clerk of the hearings; to Miss Winnifred Clark and Everett Tingley who acted as court reporters and provided the transcript of these proceedings. A special thanks also to S. A. Dodds, Administrator for the Hay River area for his general assistance and particularly with regard also to arranging for the sessions at the Indian Village. A special thanks also to Chief John Lamalice and to Councillor Joe McKay who each presided over one of the meetings held with their people.

All of which is respectfully submitted.

W. G. Morrow,
The Commissioner.

Yellowknife,
Northwest Territories.

February 5, 1968.

A P P E N D I C E S

to

R E P O R T

Editor's OPEN HOUSE by Don Taylor

Even a successful "Clean-up" campaign in Hay River this week can't succeed in cleaning up all the things that need to be cleaned up. It will be fortunate indeed if it succeeds even in the removal of its objective, namely "clutter."

The main objective of Clean-up Week is to deprive us of our long-hoarded accumulation of junk, refuse and sundry useless but eyecatching objects with which the town is decorated. For the most part it is the same accumulation of junk which made a profound impression on those who visited the town prior to the Clean-up campaigns of '65 and '64.

How many of these landmarks will still be with us at this time next week? Well that depends mainly on the able-bodied citizens of Hay River.

There are other Clean-up matters which do not involve "clutter" and in which the citizens of Hay River have very little say. One of these is the matter of "mess."

"Mess" is usually, but not always, the result of having Northern Affairs involved in something. Occasionally, however, it is the result of having some other Ottawa agency involved.

At the moment our best example of "mess" is due to activity, or rather non-activity, associated with the construction of the sewer and water system and the Mackenzie Highway. The non-activity, both in the vicinity of these projects and elsewhere in town, has resulted in non-drainage. One does not have to have an engineering degree to know that when you are able to achieve non-drainage you have created constant mess.

There are rumors to the effect that work on the water and sewer project is to resume this year. There are even reports claiming that the project will be completed this year. However, these reports do not happen to come from those I would classify as "usually reliable sources."

One of my "usually reliable sources," who is seldom wrong about such things, has advised me that Northern Affairs plans to do nothing about the highway this year, as usual, now that it has conned the town with regard to the highway's routing. Undoubtedly this is a false and malicious rumor, which a host of Northern Affairs spokesmen will be eager to deny but which, as usual, shall turn out to be true in the end.

It's also rumored that something is going to be done this year about the airport. However, there are recent indications that this rumor may fall into the same category as the one about something being done about the airport last year.

With regard to a completion date for the townhall-firehall, I'm afraid the rumor well has been pumped bone dry. Not that it really matters. Having seen what it's going to look like, nobody seems particularly anxious to move in.

This leaves one more subject on the Clean-up calendar—disorder. This is a commodity which we shall continue to have in ever increasing abundance unless the RCMP starts hoeing this little weed patch instead of cultivating fairways at Fort Smith. A few of the constables who are now engaged in perfecting their technique with a five or nine iron could probably be more usefully employed in practicing with their 12 iron (or cosh) here in the rough.

Unfortunately we shall require more than additional bodies from the Fort Smith Country Club if our present situation is to be alleviated. The RCMP powers that be will have to include some policemen.

This may not be easy since the force nowadays appears to be made up largely of men who are experts in fields other than law enforcement. For instance most of its members are experts in the field of journalism.

Elsewhere in Canada it is necessary for editors and publishers to decide what should or should not be published concerning that which transpires in open court. This is not necessary here in Hay River because we have RCMP officers to decide who shall and who shall not be admitted to the "open courts" which are held behind closed doors in someone's private office. We also have RCMP officers who decide which public court documents shall be public and which shall go into the "Top Secret" file.

That leaves me with nothing to do but quell riots.

Ex 11 EXHIBIT 11

TAPWE

Monday, February 20, 1967

EDITOR'S NOTE: We regret that the local court news is not available this week. RCMP have received orders from Donald M. Stewart and Rudy Steiner, local justices of the peace, that they are not to make court records available to representatives of Tapwe. Until suitable arrangements can be made through higher authority, the court news will not be published.

Editor's OPEN HOUSE by Don Taylor

Residents of Hay River need not be told all about how "justice" is dispensed here. Those who are concerned, and there are a surprising number who are very much concerned, already know how this is done.

Furthermore, it should not surprise them to learn that the methods employed here are not in general use in other parts of Canada or other countries which enjoy the same institutions for the maintenance of right.

To be more precise it would be better to reverse this and say that the principles and the procedures which are used elsewhere to ensure that justice be done have been unwelcome strangers in our local courts.

There is for instance the broad principle which requires the administration of justice to take place in open court. It is a principle so essential that jurists will not tolerate any impediment which might prevent or hinder any citizen who wishes to do so from attending and observing the proceedings.

How does this work in Hay River? Suppose we find out by venturing forth to observe the handling of a particular case.

First we try to find out from RCMP, who handle such arrangements, when and where the court is to be held. This in itself is an interesting experience.

First, you'll discover that RCMP "don't know" or "have no idea" when or where the court is being held. If you persevere you may get this information from an RCMP officer who will endeavour to persuade you not to attend.

"We don't want a big crowd," he will tell you.

With further research you will discover that one spectator constitutes a "big crowd" in Hay River.

In the event that your desire to attend the court overrides your reluctance to incur the displeasure of the local constabulary what are you likely to find when you present yourself at the appointed time for admission to the court?

First you must force your way through the closed door of the private office in which the court is being convened. The door itself is not much of an obstacle, presuming that it's not locked.

All you have to do is open it and walk in, and hope it wasn't closed to conceal some activity other than an open court.

So much for the door. Now you must get past the uniformed guardian of the law who is blocking your entry. Physical force is probably the easiest way, but let's set that aside for the moment in favor of peaceable debate.

This in itself is a very complex subject. Since there is no good reason why you should be arguing with this gentleman in order to secure admission to the open court session, it is impossible to suggest good reasons that will convince him to step aside.

Besides, there no longer remains a question of whether or not you will be able to gain admission to an open court session. The possibility of such a session vanished when the first of the obstacles appeared. No court can be considered truly open to every subject of the Queen if bars are placed in the path of the timid or the unsophisticated. It is an absurd claim that a court is open where it is open only to those few who are the more aggressive, more knowledgeable or more influential, or to those who are able, and indeed willing, to offer court officials an explanation of why they should be allowed to be present.

Why someone might wish to be present is quite immaterial. By presenting himself for admission to a court, regardless of his reasons for doing so, he is performing a vital public service. To some degree at least he is helping to subject the court and its officers to the public criticism which has been found over many centuries and in most circumstances to be, as one jurist put it, "the best security for the pure, impartial and efficient administration of justice, the best means of winning for it public confidence and respect."

But that humble fellow, the courtroom spectator, has been unwelcome and unwanted and for the most part absent from our local courts for a long time.

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DON TAYLOR, Publisher & Editor

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Editor's OPEN HOUSE by Don Taylor

Last week, in the first of a series of essays on the administration of "justice" in Hay River, I dealt with the role of the humble courtroom spectator.

Before moving on to other aspects of the situation I should make some mention of a special kind of spectator—the journalist.

What moves him into a special category, recognized both by law and by custom, is the fact that he is acting as the eyes and ears of hundreds or thousands of people who are not present in the court. Experience in his job has led him to become more observant and more familiar with the workings of the court than the average layman. When the court and the judicial machinery is not functioning as it should, he is generally quicker to recognize the trouble. And even if he does not, one of his readers may.

Both legislators and jurists recognize the potential of the journalist when they talk about Freedom of the Press, and other such high-sounding things.

"A free press is the unsleeping guardian of every other right that freemen prize; it is the most dangerous foe of tyranny . . ." said Sir Winston Churchill.

"A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves," said the United States Supreme Court.

There are many volumes of similar sentiments from equally prominent sources which explain why it is that, in areas where justice is highly prized, the "Press" are generally accorded special privileges in the performance of their function.

For instance most courtrooms, large or small, permanent or makeshift, include special arrangements for the seating of the Press. Not so in Hay River.

Press representatives are generally provided with copies or ready access to dockets and other court documents. Not so in Hay River.

Judges, court officials, lawyers and police generally take great pains to assist reporters in gathering the facts which go into the stories which are presented to the public. Not so in Hay River, except when we get a visit from an outside court which is not familiar with local custom.

The custom here is quite different in each of these respects. Great pains have been taken, and with obvious success, to strangle Press efforts to inform the public about what is happening in our local courts.

RCMP, who undertake the dual role of police and court officials, are under orders to deny information about court activities to representatives of this newspaper.

I could have pointed to this as the reason on the many occasions that I have been asked why Tapwe no longer publishes the Court News.

But to be honest about it my answer will have to be far more complex than that. It may take me several weeks to express it properly.

The reason that the answer is a complex one and may require much explanation is that I am not aware of any good reason why the RCMP should have taken and maintained the position it has. All I can think of are good reasons why it should not have done so.

The reason that the question must be answered is that a failure to do so would be to accept a fetter on those principles which are bundled up and labled "Freedom of the Press."

The freedom in this instance consists of freedom to publish, without special licence or special authority based on the whim of officialdom, that which is public information and not the private property of its custodians.

It is the freedom, and the duty, to publish that which should be published in the best interests of the public.

It is the freedom of the reporter and the editor to perform a rightful and a proper function.

It is the freedom of a newspaper to remain unentangled by the overt pressures and influence of public officials.

It is in bondage in Hay River at present.

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Editor's OPEN HOUSE by Don Taylor

Published reports of court proceedings can be a source of annoyance to those who have run afoul of the law. Yet these people, although they sometimes complain bitterly about the appearance of their names in print, are nevertheless the main beneficiaries of such a system of publicity.

The momentary sting of adverse publicity, like the prick of an innoculation needle, is the small price that has to be paid as a guarantee against the possibility that their discomfort at the hands of the police and the courts does not become intollerable. It is the premium which insures against the secret arrest, the third degree, the in camera court, the concentration camp and the extermination oven. Those things are possible today only when the press is controlled and the public kept in ignorance of official improprieties, excesses and injustices.

Publicity is a better guarantee than a whole regiment of ombudsmen that an individual will receive fair treatment at the hands of the police and the courts.

There are, admittedly, some individuals who do not want publicity because they do not want fair treatment. They expect to receive preferential treatment because of their "pull" with public officials.

Publicity, where it is allowed to prevail, rather upsets that cart of rotten apples.

Publication of court proceedings goes a long way toward preventing or hindering a wide range of improprieties.

Take for instance the case of the small Prairie town where police and the local justice of the peace co-operated in a very successful crackdown on traffic offenders, bootleggers and the like. Very commendable. The only trouble, as it turned out, was that a considerable discrepancy arose between the fines being collected and the amounts being reported to justice officials at higher levels. The discrepancy was finding its way into the pockets of police and court officials.

Such instances are fortunately not too common, and are rarest where publicity is most abundant.

It is probably impossible, even with publicity, to eliminate entirely the tendency of police and courts to treat with greater circumspection and leniency those of higher economic and social status. (This is a tendency common to most institutions.) But publicity can prevent that tendency from going on a rampage; it can insure that the fairness of the justice available to the more humble members of society does not lag too far behind that which is granted to a privileged few.

Publicity or other efforts to narrow the gap generally meet with very stout resistance, but not from the humble or the less fortunate.

There is no secret of the fact that Indian and Metis teenagers in Hay River are being shipped away to jail for drinking while underage while the children of white parents are discreetly warned or subjected to modest fines for similar offences.

If a month in jail is the best justice available to a teenage girl when her sentence is publicized, what will be her fate when it is not?

Perhaps this girl is better off in jail. At any rate no one cares much whether or not her name appears in the Court News.

What happens when a more genteel young lady finds herself in precisely the same predicament?

Well, to start off with there's no thought of a 30-jail term for her. Perhaps there'll be a fine of $5 or $10 for her papa to pay. And publicity?

Just about that stage the editor finds himself facing all the guns of papa, mama, their retinue of friends and sundry other public officials. And among those guns, on occasions, are those of the police and court officials.

Either pressure of that sort, or the officials involved may take it upon themselves to conceal the conviction from the press, but not always successfully.

This dual-justice, one kind for the fortunate and another kind for the miserable, flourishes best in an atmosphere of secrecy.

(To be continued.)

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APPENDIX "A"

Exhibit 6

Editor's OPEN HOUSE by Don Taylor

I started out three weeks ago to explain that the "justice" which is dispensed here in Hay River is somewhat different from that enjoyed by Canadians elsewhere. And I mentioned some of the differences.

It is different because our local courts are not held openly except by accident. Spectators are discouraged, sidetracked or physically barred from attending.

It is different because RCMP and local court officials have undertaken to conceal that which occurs in these "open" court sessions—that censorship now being complete.

It is different because it is possible for people with influence or "connections" to secure a more comfortable sort of "justice" than that available to the humble and friendless—particularly with regard to any publicity involved.

These differences, and others which I shall probably have to deal with, are firmly rooted, apparently. At least they are firmly enough rooted that nothing I've said so far has caused so much as an arched eyebrow among those associated with the self-styled "Justice Department."

There are probably a good number of explanations for the lack of any reaction—communications difficulties (that will have to be remedied immediately), and more pressing concerns like the bedroom activities of a houseful of MPs, etc.

How justice is dispensed in Hay River, or in the north generally, is obviously of minor consequence. We must enjoy a pretty good "batting average" as far as the Department is concerned, and that would appear to be by far the most important consideration.

Providing we come up with our quota of convictions, provide a sufficient number of inmates to fill our new jails, have no more than a minimal number of contested prosecutions, and do not allow too many acquittals that can't be successfully appealed at Crown expense, then nobody is going to look too closely at how it's all being accomplished.

Providing the output remains high, then nobody is going to pay much attention to the quality of the product.

Nor is anyone going to be much concerned with the "image" which is being projected by the whole justice set-up on those who have to live under it. Certainly not those in the north as part of the machinery which is supposed to be providing justice—not as long as this main objective remains less important in their schedule of priorities than securing for themselves some social or economic advantage, some added personal comfort.

Those involved in Ottawa have been too comfortable for too long, on account of their remoteness if for no better reason.

* * * * * *

Editor's OPEN HOUSE by Don Taylor

Last week a local lad, age 22, was locked up in a Hay River cell "for smoking."

At least that was the reason he was given last Monday when he was sentenced by justice of the peace Rudy Steiner.

Two days in jail for smoking in the courtroom. Not while the court was in session, but while he and several other persons were waiting for the court to be called to order.

Nor was he alone in his ignorance of courtroom etiquette for several of his companions were also smoking. He butted his cigarette when asked to do so. So did the others who were smoking. But, unlike his companions, this lad was singled out for imprisonment.

Why? How could such a thing be possible?

Well, dear reader, when you know the answer to those questions you'll understand why it is that I have had to devote so much of the space on this page to the matter of "justice" and how it is dispensed in Hay River.

Here we have the case of a young man who is gainfully employed, a responsible citizen of the community. He is suspected of a minor traffic violation, one for which the maximum penalty for a first conviction is a fine of $50.

RCMP come to his home, where he is in bed, and arrest him. He is taken to the police barracks and obliged to put up bail.

He pleads "not guilty." At his trial he conducts his own defence, and he is found "not guilty."

He is then peremptorily sentenced to jail. He is deprived of his freedom and taken to spend two days as the unwilling guest of the RCMP in an uncomfortable and crowded cell.

Two days with the smell of stale beer and fresh vomit constantly in his nostrils, his bed a mattress permeated with sweat and urine.

Two days that can never be erased from his life. No appeal court can give him back that time now that it has been served. No power on earth can turn back the clock and say it never happened.

Is two days imprisonment a proper and suitable penalty under our system of justice for such a trivial-breach of manners? Never!

Is a man's liberty a matter of such casual concern that he can be deprived of it with such abruptness and lack of fuss? Surely not.

For if the answers to those questions were to be in the affirmative, then justice would be moribund if not already dead.

* * * * * *

Editor's OPEN HOUSE by Don Taylor

Last week the Canadian Association of Police Chiefs revealed proposals for sweeping new powers of search, arrest and investigation. These were sought for the purpose of protecting society from criminals.

It was clear from the hostile reaction from most quarters that it was felt the greater danger to society would come from another direction—from police themselves and abuses of the new powers they sought.

Indignant statements from many quarters gave some assurance that proposals for arrest and search without warrant, "preventive detention" without charge and other infringements of civil liberties would not be easily thrust on Canadians, at least not those living south of the 60th parallel.

In the north civil liberties have not always been so jealously guarded.

In the south the idea of arrests without warrant on minor criminal offences is considered outrageous. In the north persons suspected on non-criminal infractions can, and are being arrested without warrants.

In the south police have to tread very softly in matters of search and seizure. Not so in the north where territorial legislation permits a considerable amount of clumsiness, and other circumstances render useless the few safeguards of civil liberties which haven't yet been eliminated from territorial laws.

There has probably always been a tendency on the part of zealous law enforcement officials to seek shortcuts to their objective of bringing wrongdoers to justice. This applies not only in the criminal field, but also in the greater realm of petty infraction and regulation that legislators have managed to invent.

But regardless of the nature or severity of the offence, there must be some method employed to distinguish between those who are in fact wrongdoers, and those who are not. The method which has been found to be most satisfactory over the centuries—the one least prone to error—has required enforcement officers to collect and present ample evidence against a suspect so as to prove his guilt beyond a reasonable doubt. This is not always an easy task.

The reason it is not, and should not be, an easy task is that when it becomes a simple matter to convict a wrongdoer, it becomes almost as easy to convict an innocent person.

When too many shortcuts are taken by enforcement officers it becomes easier to convict the innocent (who have no reason to be on their guard) than the guilty (who are schooled in the arts of dodging). It means that all suspects are subjected to the same indignities of arrest, search, seizure and detention and their resultant consequences. While this may be well deserved in the case of a person who happens to be guilty, it's a monsterous imposition to expect any innocent person to endure.

Yet enforcement officers are perpetually asking legislators for powers of arrest, search, seizure or detention without warrant and without evidence that such action is justified. They ask that mere suspicion be substituted for the prerequisite of proof.

Just a couple of weeks ago the Yukon Territorial Council voted to retain the power of arrest without warrant for game officers, although it did reject a proposal to provide the same officers with the power of search without warrant.

In the Northwest Territories almost nothing remains on the statute books to protect an innocent person from arrest, search or seizure by officers responsible for the enforcement of game, motor vehicles, liquor and other types of regulations.

The legislation has been foisted upon the Territorial Council by the Federal Justice Department, usually with the claim that without it no convictions could be obtained. The latter statement, if true, is a sad testimony of the abilities of our law enforcement officers.

It is frightening to realize how readily the rights and liberties of the innocent are gambled on the chance of netting a few who are guilty.

TAPWE

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DON TAYLOR, Publisher & Editor

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Editor's OPEN HOUSE by Don Taylor

I recall a magistrate, now retired, who used to slice people into thin strips with his tongue whenever an accused person being arraigned before him would say he felt he was innocent but would plead "guilty" to avoid trouble and expense.

In the magistrate's eyes such conduct was more despicable than that of which the suspect usually stood accused. It was a form of treason, designed to injure the system of justice which Her Majesty's courts were entrusted with guarding.

When an accused person appeared before that gentleman, he had to "feel" guilty, or at the very least convince the magistrate that he felt guilty, before any plea of "guilty" would be accepted.

And even when an accused had pleaded "guilty," if circumstances began to indicate the possibility that he might not be, the magistrate would order the plea withdrawn and the evidence supporting the charges presented. No one appearing before him was going to be railroaded, if he could help it.

Although cricket was probably more to his liking than baseball, he did know enough about the American game that he didn't want an accused coming up to bat in his court with two strikes already against him.

There was no argument that could convince him that a person who felt innocent might be better off pleading "guilty." Plenty were tried.

For instance the accused would say he could not afford the expense of hiring a lawyer. (If this were true and the case was such that a lawyer was necessary, this would be arranged at no cost to the accused. If not, the accused would defend himself and the magistrate see to it that he got a fair shake at every turn.)

The accused might also claim that he would be put to a great deal of trouble and inconvenience by pleading "not guilty." (Not so. It was the prosecution that would inherit the inconvenience and trouble of trying to establish its case.)

The accused "didn't stand a chance," or "the odds were against him," he would say. (Actually the reverse was the case in that court, because the magistrate held to the old-fashioned belief that the benefit of any doubt should go to the accused.)

Here in the Northwest Territories the situation is somewhat different. An accused person does go into court, for the most part, with two strikes against him. And sometimes he has three strikes against him before he has even been asked to plead.

A vastly greater portion of those charged with offences are illiterate or close to it, or are ignorant of the proper functionings of a court. These can be charged, convicted and sentenced with only the haziest of ideas of what it was they were supposed to have done wrong.

These people, as well as many of the accused who are more worldly-wise, go into court well primed with the belief that they have no alternative but to plead "guilty."

Where did they get this idea? The police have told them this, and have volunteered all sorts of reasons similar to those I mentioned earlier which are designed to convince an accused who might have some reservations.

Where an accused makes a slip and pleads "not guilty," police are not in the least reluctant to impress upon him the hopelessness of his case. In this way he can be persuaded to change his mind, and his plea, at a subsequent appearance before a tribunal which is as reluctant as the prosecutors to have the merits of the case aired.

An accused who, willingly or not, pleads guilty when he feels he is not, is mainly injuring himself. Those who assist and encourage him in order to suit their own convenience are parasites and looters of our system of justice.

The few who are accused and feel they are not guilty and are prepared to defend themselves, even though they do so unsuccessfully—they and their helpers are the champions of our heritage of justice.

What judge on the bench did more for the cause of justice than Captain Dreyfus in his Devil's Island cell? All he did was shout his innocence.

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APPENDIX "B"

STAFF OF COMMISSION

D. C. McDonald, Esq.	Commission Counsel
V. N. Morris, Esq.	Clerk to the Commission

APPEARANCES

P. M. Owen, Esq., Q.C.	Counsel for Donald Taylor

APPENDIX "C"

HEARINGS

Public hearings were held in three places on the dates listed beside the name of the settlement, town or city concerned:

Hay River, N.W.T.	-	August 15, 16, 17, 18 October 3, 4, 5, 6, 23 November 22, 23, 1967
Baker Lake, N.W.T.	-	September 2, 1967
Edmonton, Alberta	-	December 22, 1967 and January 12, 1968

APPENDIX "D"

WITNESSES

Witnesses were called at each public hearing as listed below:

Hay River, N.W.T.

Donald Taylor
Peter Bradbury Parker
David Harry Searle
Constable Robert John Anderson
Allan Tholl
Donald William Strang
Donald Barker
Frank Mackie
Rudolph Steiner
Sergeant Joseph Raymond Johnson
J. McKay
Francis Lamalice
Daniel Sonfrere
Arthur Norn
Fred Martel
Chief John Lamalice
E. Fabien
Jean Sabourin
Inspector Harry T. Nixon
Mrs. Lillian Hupp
Sergeant David Frank Friesen
Rev. Benjamin Stanley Hall
Donald M. Stewart
Norman McCowan
Albert O. Ambedian
Charlie Sunrise
G. LeMouel
Mike Fedorus
Dale Archibald
Cecil Henry Rodgers
Corporal Steve Penteluik
Rosemary Scott
Clarence Francis Wilkins
Ivor Halliday

Witnesses - Continued

George Lafferty
Samuel Allan Haswell Dodds
Robert Porritt
Mrs. Bonnie Bellamy
Dr. Earl Leslie Covert
Mrs. Bernice Alice Fedorus
Mrs. A. Wesolowski
John Clifford Booth
Robert G. Jamieson
Mrs. Edith Spreu
Frank Joseph Vojacek
Mark M. deWeerdt
Gordon Brian Purdy
Constable Joseph Georges Raymond St.-Jean
Mrs. Adeline Readman
Arthur Kloepfer
Mrs. Janet St. Arneault

Baker Lake, N.W.T.

Judge Henning Brønstad

Edmonton, Alberta

Corporal Steve Penteluik (recalled)
Constable Klaus Dieter Gerhardt

APPENDIX "E"

LIST OF BRIEFS

Exhibit 17 -	Brief of N.W.T. Bar Association
Exhibit 31 -	Brief of Inspector H. T. Nixon, R.C.M.P.
Exhibit 42 -	Brief of Hay River Ministerial Association
Exhibit 55 -	Brief of Mr. S. A. H. Dodds, Area Administrator, Department of Indian Affairs and Northern Development
Exhibit 61 -	Brief of Mr. Rudolph Steiner, J.P.
Exhibit 62 -	Brief of Mr. Donald Taylor, Editor, "Tapwe"
Exhibit 66 -	Brief of Messrs. I. Halliday, Chief Probation Officer, and D. R. Hunter, Probation Officer
Exhibit 68 -	Brief of the Indian-Eskimo Association of Canada, N.W.T. Division

APPENDIX "F"

LIST OF EXHIBITS

Exhibit No. 1	-	Certified copy of Order in Council P.C. (1967-1327). Morrow Inquiry re: Administration of Justice.
Exhibit No. 1A	-	Original of Proclamation (follows Exhibit 46 when marked).
Exhibit No. 2	-	Page of Edmonton 'Journal' containing advertisement of Royal Commission.
Exhibit No. 3	-	March 27, 1967 issue 'Tapwe' newspaper.
Exhibit No. 4	-	April 3, 1967 issue 'Tapwe'.
Exhibit No. 5	-	April 10, 1967 issue 'Tapwe'.
Exhibit No. 6	-	April 17, 1967 issue 'Tapwe'.
Exhibit No. 7	-	April 24, 1967 issue 'Tapwe'.
Exhibit No. 8	-	May 1, 1967 issue 'Tapwe'.
Exhibit No. 9	-	May 23, 1966 issue 'Tapwe'.
Exhibit No. 10	-	May 15, 1967 issue 'Tapwe'.
Exhibit No. 11	-	February 20, 1967 issue 'Tapwe'.
Exhibit No. 12	-	Clippings from 'Court News' in issues of 'Tapwe'.
Exhibit No. 13	-	Schedule of proposed court circuits 1967.
Exhibit No. 14	-	Schedule of magistrate's court sittings at Hay River.
Exhibit No. 15	-	Extract of proceedings of conference of Justices of the Peace 1967.
Exhibit No. 16	-	Transcript of 1965 Justices of the Peace conference.
Exhibit No. 17	-	Brief of N.W.T. Bar Association.

Exhibit No. 18 - Letter of June 17, 1965, from Justice of the Peace, Frobisher.

Exhibit No. 19 - Statement re population of Hay River area.

Exhibit No. 20 - Statement of charges re minors consuming liquor.

Exhibit No. 21 - Magistrate's record book.

Exhibit No. 22 - Letter dated August 15, 1967 from A. J. Tholl, Secretary Treasurer, Town of Hay River, to the Commissioner.

Exhibit No. 23 - Transcript of court proceedings re Donald Strang - April 17, 1967.

Exhibit No. 24 - Copy of letter dated April 5, 1967 from Rudolph Steiner to Minister of Justice.

Exhibit No. 25 - Copy of letter dated April 11, 1967 from Rudolph Steiner to Minister of Justice.

Exhibit No. 26 - Warrant of Committal upon Conviction re Donald Strang.

Exhibit No. 27 - Copy of letter dated June 10, 1964 from Inspector Lysyk to Rudolph Steiner.

Exhibit No. 28 - Information re John Scott.

Exhibit No. 29 - February 18,1965 issue of 'Tapwe' newspaper.

Exhibit No. 30 - May 20, 1965 issue of 'Tapwe' newspaper.

Exhibit No. 31 - Brief submitted to Royal Commission, October 1967, by Inspector H. T. Nixon.

Exhibit No. 32 - Hay River Bylaw No. 178.

Exhibit No. 33 - Hay River Bylaw No. 287.

Exhibit No. 34 - Form of Appeal.

Exhibit No. 35 - Jones index card.

Exhibit No. 36 - Jones Index card.

Exhibit No. 37 - Elizabeth Field index card.

Exhibit No. 38 - Helen Sunrise index card.

Exhibit No. 39 - Michael Monkman index card.

Exhibit No. 40 - Bank List, Band No. 04 Hay River.

Exhibit No. 41 - List of liquor charges.

Exhibit No. 42 - Brief of Hay River Ministerial Association.

Exhibit No. 43 - Letter dated April 10, 1967 from Donald M. Stewart to Minister of Justice.

Exhibit No. 44 - Search Warrant re A. O. Ambedian.

Exhibit No. 45 - Summons re A. O. Ambedian.

Exhibit No. 46 - Copy of Liquor Ordinance N.W.T.

Exhibit No. 48 - Letter dated January 17, 1966 from Mrs. Bodnarchuk of Field Hyndman & Co., to Donald Taylor.

Exhibit No. 49 - Copy of Carrothers Commission report.

Exhibit No. 50 - Copy of Notice of Intention re George Lafferty.

Exhibit No. 51 - Copy of Information re George Lafferty.

Exhibit No. 52 - Copy of letter dated July 10, 1967 from George Lafferty to Brian Purdy, Esq.

Exhibit No. 53 - Letter dated July 24, 1967 from Brian Purdy to George Lafferty.

Exhibit No. 54 - Letter dated August 24, 1967 from H. C. Paul to the Commissioner.

Exhibit No. 55 - Brief of Mr. S. A. H. Dodds.

Exhibit No. 56 - Clippings from newspapers.

Exhibit No. 57 - Copy of transcript of inquest proceedings - Mrs. M. G. Stephenson.

Exhibit No. 58 - Summary of Appeals pending.

Exhibit No. 59 - Appeals January 1, 1966 to present.

Exhibit No. 60 - Memorandum of Agreement.

Exhibit No. 61 - Brief by Rudolph Steiner dated October 14, 1967.

Exhibit No. 62 - Brief by Donald Taylor.

Exhibit No. 63 - R.C.M.P. form pertaining to Donald Strang.

Exhibit No. 64 - Six photographs of R.C.M.P. detachment cells and a letter from Inspector H. T. Nixon.

Exhibit No. 65 - Statutory Declaration of Constable R. J. Anderson.

Exhibit No. 66 - Brief of I. Halliday, Chief Probation Officer, and D. R. Hunter, Probation Officer.

Exhibit No. 68 - Brief of the Indian-Eskimo Association of Canada, N.W.T. Division.

Exhibit No. 69 - Letter dated October 20, 1967 to Judge William Morrow from A. Kloepfer.

Exhibit No. 70 - Statutory Declaration of Donald Taylor.

Exhibit No. 71 - Letter dated December 4, 1967 from Rudolph Steiner.